The origins and impact of the function of crime investigation and detection in the British police service

This item was submitted to Loughborough University’s Institutional Repository by the/an author.

Additional Information:

- A Doctoral Thesis. Submitted in partial fulfillment of the requirements for the award of Doctor of Philosophy of Loughborough University.

Metadata Record: https://dspace.lboro.ac.uk/2134/7632

Publisher: © Lawrence T. Roach

Please cite the published version.
This item is held in Loughborough University’s Institutional Repository (https://dspace.lboro.ac.uk/) and was harvested from the British Library’s EThOS service (http://www.ethos.bl.uk/). It is made available under the following Creative Commons Licence conditions.

 Attribution-NonCommercial-NoDerivs 2.5

You are free:

- to copy, distribute, display, and perform the work

Under the following conditions:

**Attribution.** You must attribute the work in the manner specified by the author or licensor.

**Noncommercial.** You may not use this work for commercial purposes.

**No Derivative Works.** You may not alter, transform, or build upon this work.

- For any reuse or distribution, you must make clear to others the license terms of this work.
- Any of these conditions can be waived if you get permission from the copyright holder.

Your fair use and other rights are in no way affected by the above.

This is a human-readable summary of the Legal Code (the full licence).

Disclaimer

For the full text of this licence, please go to: http://creativecommons.org/licenses/by-nc-nd/2.5/
THE ORIGINS AND IMPACT
OF THE
FUNCTION OF CRIME INVESTIGATION AND
DETECTION
IN THE
BRITISH POLICE SERVICE

by

Lawrence Thornton Roach, QPM B.Sc (Econ)

A thesis submitted in partial fulfilment of
the requirements for
the degree of

Doctor of Philosophy

of

Loughborough University

June 2004

© Lawrence T. Roach 2004
ACKNOWLEDGMENTS

My decision to re-launch myself as a researcher after a lifetime spent in operational policing could not have been contemplated let alone achieved without the encouragement, support and active assistance of many people. I will try briefly to convey the extent of my indebtedness to them here.

My thanks must first go to Professor Sue Cox, formerly head of the Centre for Hazard and Risk Management at Loughborough University and now Dean of the Management School at Lancaster University. Without her warmth, encouragement and patience I doubt I would have made the difficult transition from near the top of one career to the foot of another. Certainly, I could not have made the necessary personal and academic adjustments. In that connection Professor John M. Wilson, played an indispensable part. Without his ability to find solutions to the impossible administrative and organisational problems set by my research, and his calmness and sure guiding hand at moments of stress, this thesis would not and could not have appeared.

I suspect that every research student owes much of any success they might have to the support and guidance of their supervisors. I am no exception to that rule. Professor Adrian Wilkinson of the Business School at Loughborough University and Professor John Baldwin, Head of the Law School at the University of Birmingham kindly undertook that task for me. The extent of the problems they so ably and efficient resolved is amply shown in the fact that senior members of two different Universities were required properly to supervise my work. I am more grateful than I can easily express for the value and the robustness of their guidance, and for their unfailing support in difficult circumstances.

For different reasons I also owe a great deal to the late Sir Karl R. Popper with whose views and methods I became acquainted while taking my first degree on a police scholarship to the London School of Economics and Political Science in the later 1960’s. I recognised then his powerful influence on the social sciences, but only when I began serious work on this thesis did I fully appreciate the depth and strength of his scholarship and the high standards he set for research. His views and, I hope, his standards have much influenced my approach to this work.

In addition to my other difficulties, my research was done part-time, at home and more than one hundred miles from my University campus. I have therefore been more than usually dependent on the support of libraries and their staff. The
custodians of the Pilkington Library at my own University were considerate to the point of indulgence of a student unwilling to return a book with anything less than a fortnight’s notice and only able to transact business by ‘phone and fax. As to the libraries that dealt with me in person, the British Library of Political and Economic Science at the London School of Economics and the Learning Resource Centre at the University of Hertfordshire could not have been treated me with greater courtesy or given better assistance. Elsewhere I was granted a pass to the British Library Newspaper Library at Colindale in London, and what was more important, an excellent introduction to its contents. And the staff of what, perforce, became my main source of access to books, the British Library in Euston Road, London, excelled themselves. Much of the sparse literature on early policing is either unavailable or out of print, but the British Library rarely failed to produce a reference, however old or obscure. I am particularly grateful for the interest and enthusiasm of its staff in supporting a demanding, and sometimes troublesome, mature student researcher.

I discovered much of the original material used in this research at the Public Records Office (now the National Archive) at Kew in London. Everyone and anyone visiting that treasure house for researchers will find themselves constantly in conversation with its staff. Successful research at the PRO is impossible without their support. I found it expert, understanding and ever-available.

I have also had the advantage of access to material held at the Metropolitan Police Museum at Blackwall in London and in the Metropolitan Police Libraries at New Scotland Yard and at the Training School at Hendon. In that regard my special thanks go to Ellie Haynes for her personal interest and support.

Finally, let me thank my family and friends for their fond, firm (if sometimes uncomprehending) support. Special thanks in that regard must go first to my wife, Sandra and then to the members of the Metropolitan Police Traditional Aikido Club under their (and my) Chief Instructor Denise Holmes, a group to which I belong both as a participant and as Honorary President. Not only did they keep me informed and on the right track in developments in policing, but they also endured my sometimes incomprehensible musing and occasional cross-examinations about policing and its problems without too much complaint. For that, and for all the other help and support I have had, I give much thanks. For such errors, omissions and mere incompetence as may be discovered in this work, I take full responsibility.

Lawrence T. Roach, QPM

June 2004
Keywords

- Metropolitan Police
- Detectives
- History of policing
- Police reform
- Crime prevention
- Crime detection
- Crime investigation
- Criminal justice
- Peacekeeping
- Public order
LOUGHBOROUGH UNIVERSITY

ABSTRACT

THE ORIGINS AND IMPACT
OF THE FUNCTION OF CRIME INVESTIGATION AND
DETECTION
IN THE BRITISH POLICE SERVICE

by Lawrence T. Roach QPM  B.Sc.(Econ.)

In this thesis the process by which crime investigation, detection and prosecution became an integral function of the British police service is analysed through an examination of public records, contemporary papers and documents, and by reference to the literature on policing. The impact of the adoption of that function on the role, organisation and management of modern British policing is then assessed.

It is established that at its foundation by Robert Peel's Metropolitan Police Act of 1829, the British professional police service was intended to be a purely preventive and protective body of uniformed patrolling constables. The function of crime investigation, detection and criminal prosecution was then subsequently added to its responsibilities by government using administrative rather than any democratic or legislative means, thus creating the present dual crime prevention and crime detection role of the police.

Major recurrent problems experienced by the modern British police service are identified as arising from that change in its original functions and purposes, and proposals for action to resolve them are set out.
## Contents

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Introduction</td>
<td>1 to 11</td>
</tr>
<tr>
<td></td>
<td>Background</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Origins of professional policing</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Constables and Justices</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Bow Street Runners and Patroles</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>The New Police</td>
<td>10</td>
</tr>
<tr>
<td>2.</td>
<td>Sources and Methods</td>
<td>12 to 30</td>
</tr>
<tr>
<td></td>
<td>Practical difficulties</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>Sources</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td><em>Public and Parliamentary papers</em></td>
<td>14</td>
</tr>
<tr>
<td></td>
<td><em>British Library Newspaper Library</em></td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>Risks of history</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td>Literature on policing</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td><em>Libraries</em></td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>Uses of history - the historians view.</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>Sociological methods</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td><em>Sociology of policing</em></td>
<td>21</td>
</tr>
<tr>
<td></td>
<td><em>Organization studies</em></td>
<td>23</td>
</tr>
<tr>
<td></td>
<td>- paradigms and incommensurability</td>
<td>23</td>
</tr>
<tr>
<td></td>
<td>- methodological proliferation.</td>
<td>24</td>
</tr>
<tr>
<td></td>
<td>Popper and the scientific method</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td><em>Science as a method</em></td>
<td>26</td>
</tr>
<tr>
<td></td>
<td>Sources and Methods - conclusion</td>
<td>27</td>
</tr>
<tr>
<td></td>
<td>Submission</td>
<td>29</td>
</tr>
<tr>
<td>3.</td>
<td>Foundations of Professional Policing</td>
<td>31 to 44</td>
</tr>
<tr>
<td></td>
<td>Peel’s New Police</td>
<td>31</td>
</tr>
<tr>
<td></td>
<td>Select Committee of 1828</td>
<td>32</td>
</tr>
<tr>
<td></td>
<td><em>Crime in 1829</em></td>
<td>33</td>
</tr>
<tr>
<td></td>
<td><em>Unreliability of Crime Statistics</em></td>
<td>34</td>
</tr>
<tr>
<td></td>
<td>Peel and the Causes of Crime</td>
<td>35</td>
</tr>
<tr>
<td></td>
<td><em>The parochial authorities</em></td>
<td>36</td>
</tr>
<tr>
<td></td>
<td><em>A plea for co-ordination</em></td>
<td>36</td>
</tr>
<tr>
<td></td>
<td>The Watch House system</td>
<td>38</td>
</tr>
<tr>
<td></td>
<td>Peel and the London Magistrates</td>
<td>40</td>
</tr>
<tr>
<td>Contents Section</td>
<td>Pages</td>
<td></td>
</tr>
<tr>
<td>------------------</td>
<td>-------</td>
<td></td>
</tr>
<tr>
<td>Peace Preservation Police</td>
<td>42</td>
<td></td>
</tr>
<tr>
<td>Peel as Reformer</td>
<td>42</td>
<td></td>
</tr>
<tr>
<td>‘One Head Presiding’</td>
<td>43</td>
<td></td>
</tr>
<tr>
<td>4. First Commissioners</td>
<td>45 to 59</td>
<td></td>
</tr>
<tr>
<td>Peel’s neglect</td>
<td>45</td>
<td></td>
</tr>
<tr>
<td>Political context</td>
<td>46</td>
<td></td>
</tr>
<tr>
<td>Peel and policing</td>
<td>47</td>
<td></td>
</tr>
<tr>
<td>Peel and his Commissioners</td>
<td>47</td>
<td></td>
</tr>
<tr>
<td>The magistrates and the New Police</td>
<td>51</td>
<td></td>
</tr>
<tr>
<td>Influence of Colquhon</td>
<td>51</td>
<td></td>
</tr>
<tr>
<td>Constable Culley</td>
<td>53</td>
<td></td>
</tr>
<tr>
<td>The Press</td>
<td>54</td>
<td></td>
</tr>
<tr>
<td>Importance of Patrol</td>
<td>55</td>
<td></td>
</tr>
<tr>
<td>First Instructions to the New Police</td>
<td>56</td>
<td></td>
</tr>
<tr>
<td>Other Instructions</td>
<td>58</td>
<td></td>
</tr>
<tr>
<td>Responsibilities of the New Police</td>
<td>59</td>
<td></td>
</tr>
<tr>
<td>5. Select Committees</td>
<td>60 to 76</td>
<td></td>
</tr>
<tr>
<td>The ‘Popay’ Select Committee of 1833</td>
<td>61</td>
<td></td>
</tr>
<tr>
<td>Use of Spies</td>
<td>63</td>
<td></td>
</tr>
<tr>
<td>Police of the Metropolis Select Committee, 1833/1834</td>
<td>65</td>
<td></td>
</tr>
<tr>
<td>Evidence to the 1833 Police Committee</td>
<td>65</td>
<td></td>
</tr>
<tr>
<td>The prevention of crime</td>
<td>66</td>
<td></td>
</tr>
<tr>
<td>The detection of offenders</td>
<td>67</td>
<td></td>
</tr>
<tr>
<td>Instructions from Home Secretary</td>
<td>69</td>
<td></td>
</tr>
<tr>
<td>Common Informers</td>
<td>70</td>
<td></td>
</tr>
<tr>
<td>Reports of the Select Committees</td>
<td>71</td>
<td></td>
</tr>
<tr>
<td>‘Executive’ and ‘Judicial’ functions</td>
<td>74</td>
<td></td>
</tr>
<tr>
<td>Detective duties</td>
<td>75</td>
<td></td>
</tr>
<tr>
<td>6. Turning Point</td>
<td>77 to 93</td>
<td></td>
</tr>
<tr>
<td>Police Offices Select Committee of 1837/8</td>
<td>77</td>
<td></td>
</tr>
<tr>
<td>Edward Gibbon Wakefield</td>
<td>81</td>
<td></td>
</tr>
<tr>
<td>The Commissioners and amalgamation</td>
<td>83</td>
<td></td>
</tr>
<tr>
<td>The Commissioners and the duties of the magistrates</td>
<td>86</td>
<td></td>
</tr>
<tr>
<td>The Commissioners and crime</td>
<td>87</td>
<td></td>
</tr>
<tr>
<td>Misunderstandings</td>
<td>93</td>
<td></td>
</tr>
<tr>
<td>7. Acts and Consequences</td>
<td>94 to 104</td>
<td></td>
</tr>
<tr>
<td>The hasty Acts of 1839</td>
<td>94</td>
<td></td>
</tr>
<tr>
<td>The Royal Commission of 1839</td>
<td>98</td>
<td></td>
</tr>
</tbody>
</table>
Introduction

If it is the role of the police service to prevent crime and detect criminal offenders, as both the British public and their politicians firmly believe and as its leaders accept, why has it not long ago been disbanded or replaced by something more effective?

In 1970 there were some 97,000 police officers in England and Wales. By 2000 that figure was 26% higher at 124,0001 while expenditure on policing had increased nearly six-fold, from £1,400 million2 to £7,952 million.3 Yet in that same period of rapid growth in the resources devoted to policing, offences in the categories most likely to create fear of crime in the minds of the public (theft of and from vehicles, burglary in dwelling and robbery) almost trebled, from 520,162 to 1,535,059.4 Having failed so grossly, why is the police service still with us?

This research challenges basic assumptions about the role and purposes of the police service and what it can be expected to achieve. Original public records and contemporary documents show that, contrary to common belief, the British police service began as a purely protective and preventive uniformed patrolling force with no responsibility for levels of crime. Plain clothes detectives investigating crime and employed to identify, detect and prosecute criminals (criminal investigation departments or CIDs) are a later, and improperly instituted, addition to British policing.

In the light of that finding the present role, organisation and structure of the police service is examined to show that the addition of a detective function is a major cause of its failure to have any sustained impact on levels of crime, and is the source of some of its more intractable problems. How that conclusion is reached and justified, and what needs to be done to restore policing to its proper place in our criminal justice system is the subject matter of this thesis.

Background

Government, Parliament and the great mass of the British public take the existence, present duties, and activities of the full-time, paid, professional, police

---

1 Home Office www.statistics.gov.uk/Expenddata/Spreadsheets/D3574.xls
2 Home Office Circular 114/1983 paragraph 2
3 Home Office Annual Report 2000/2001 Section 6, Financial Tables 8 and 9
4 op. cit. /D4853.xls
Introduction

officer for granted. The media and other institutions that market and distribute information and commentary about social issues and events are equally unquestioning. Politicians, press and public are alike prone to criticise their police service, and to subject it to verbal and even occasionally physical attack. But rarely, if ever, is its history and development, or its place as a vital element in the health and stability of society seriously questioned or challenged. The British public and the politicians who represent them, and the overwhelming majority of those academics and commentators who have an interest in policing, simply assume that the modern police service has always taken its present form and had its present responsibilities. Indeed, there is a tendency to believe that the direct alternative is anarchy and the collapse of civilisation. Yet it has not always been so and the change has been relatively recent.

Origins of professional policing

Up to and even beyond the 1830's the people themselves were responsible for the tasks and functions now reserved to the profession of policing.\(^5\) Alfred, and his Saxon and Viking successors, moulded the old Saxon society into something peculiarly diverse and English. Under a surface of complexity its system of peacekeeping and law enforcement was essentially direct, local and based on simple principles. Frankpledge bound the head of each family to be responsible for the good conduct of the others. Families (tythes) grouped together in tens (decennaries) to elect one of their number to represent and have authority over them.\(^6\) Ten decennaries made a hundred with responsibility to hold regular courts to deal with local disputes and delinquencies.\(^7\) A sheriff had the power in each county to hold an annual court to renew the frankpledge of the hundreds. That court also examined and settled disputes and feuds, as well as the more serious crimes and breaches of the peace of the shire. The sheriff had authority to raise the whole county in the pursuit of delinquents where necessary (the posse comitas), and acted as the Kings representative in enforcing his laws and in keeping the peace of the county.\(^8\)

William the Bastard inherited this sound system of law enforcement and peacekeeping when he replaced the rulers of England after 1066. He was wise enough to try to preserve its best features.\(^9\) However, his imposition of a

---

\(^5\) Reith, C (1948) page 1
\(^6\) ibid page 2
\(^7\) ibid page 3
\(^8\) Tobias, J. J. (1970 page 16, col. 1
\(^9\) Reith, C (1943) page 14
controlling Norman elite on a system that was in essence the outcome of a long and often bitter battle to agree a peace between Saxon and Viking equals, created formidable problems.10 The fragile stability of Saxon society depended on the principle of collective responsibility for peace and good order coupled with a broad consensus on the legitimacy of the rule of their Kings. The Conquest cut through that delicate balance, dividing England between those who ruled and those who now had to obey. There could be no reconciling their interests and no unity between them. As the Deputy Keeper of Records at the Tower of London noted in the nineteenth century;

‘Notwithstanding the ordinances of the Norman kings to insure the conservancy of the peace through the medium of free pledges, it is evident that those laws were disregarded by the Saxons as well as the Normans; for how could it be reasonably expected that people so diametrically opposed to, and entertaining so thorough a dislike for each other, would cordially unite in common offices of friendship, or even of mutual intercourse?’11

The social division and enmity created by the Conquest destroyed the communal unity on which Saxon peacekeeping and law enforcement had been built. No longer was there broad agreement about who, or what, should be condemned or punished. Or what was or was not to be regarded as a ‘crime’ and therefore subject to the rigours of the law. Such matters no longer depended solely on precedent and local opinion. They were now also to be judged by what best reinforced the King’s authority over his subjects.

The structure and form of peacekeeping and criminal justice in England underwent drastic change, with King’s officers appointed to enforce his laws and protect his interests overlaying and distorting the Saxon system of freely elected citizens responsible for the behaviour of their neighbours.12 But elements of the old structures and customs persisted, and the idea of local responsibility for local delinquency never quite disappeared.13 The system of frankpledge fell rapidly into disuse, principally because the Norman lords and clergy were exempt from it.14 The head of the decennary and the Sheriff did not, however, share the demise of the pledge system. They gradually shifted in character from being

10 Critchley, T.A. (1978) page 3
12 Critchley, T.A., op cit, page 16
13 ibid page 4
14 Report of the Royal Commission etc., op cit, Appendix 4 page 192
purely local administrators and representatives of the community to take on many of the characteristics and duties of royally appointed officers. They became much more concerned with the enforcement of the King's edicts and the punishment of offenders and delinquents, although they retained an overall responsibility for the maintenance of the peace in the county.  

**Constables and Justices**

By 1285 the functionaries that had emerged from the intermingling of the Saxon pledge system with the enforcement of the King's laws included officials described as 'constables'. These officers held a highly regarded place as King's officers in their local community despite retaining many of the characteristics of the Saxon head of decennary. They were not appointed by the King's representatives in the county but were still selected or elected by parishioners from amongst themselves in the Saxon tradition. As such they were, and remained, an integral part of the local community.

Up to and beyond the establishment of the professional police service in the nineteenth century, locally convened courts (hundred courts and courts leet) also continued to meet throughout the realm. These courts either selected or approved the appointment of constables to keep the peace in the old tradition, and dealt with minor delinquency and local administration. Sheriffs meanwhile evolved in a different direction, becoming increasingly concerned with the maintenance of the King's authority in the county and, as the judicial system refined and developed, with more ceremonial and representative functions.

The post-Conquest tension between local loyalties and central power was a persistent threat to peacekeeping and to the King's rule, always able to bring both to the edge of collapse. In an attempt to impose some order on an increasingly fissiparous system, knights and other officers appointed by the King's commission were regularly despatched to the counties and localities to try to restore the peace and proper observance of his laws. In the Justices of the Peace Act of 1361 (34Edw.III, c.1) the practice was formalised by the appointment of permanent justices of the peace who took up the main burden of local crime prevention, detection and punishment as well as peacekeeping in the King's name. Locally elected constables were drawn, if only reluctantly, into assisting the

---

15 Critchley, T.A., op cit. page 5
16 ibid
17 ibid pages 12-13
18 Stead, P.J. (1985) pages 9-10
19 Critchley, T.A., op cit. page 8
justices in that work. For that purpose the practice developed of requiring constables to take an oath of office before the Justice, to serve not only as representatives of their community, but also as King’s officers in the conservancy of the peace in their locality.

The relationship between justices and other peacekeeping officials, particularly local constables, is a particular focus of this research. The Statute of Winchester of 1285 (13Edw.I cap 6) contained many radical innovations. Among them was a provision to ensure that every citizen between the ages of 15 and 40 kept arms in his house to enable him to do his part in peacekeeping and crime prevention should need arise. Local constables were given the power to enter the homes of citizens to inspect such arms. They were required by the Act to ‘present’ the names of defaulters to the local justices for punishment of any neglect. This is probably the earliest formal example of the relationship between the Norman appointed justice and the Saxon elected constable which was to become an enduring feature of the developing English criminal justice system.

The Statute of Winchester also contained provisions to establish a system of nightly ‘watch and ward’ in towns. Rate-paying inhabitants manned the watch on a rota system directly derived from the Saxon tradition. The purpose was to control the movement of itinerant criminals and other miscreants. The watch did not replace, but rather supplemented, the work of local constables, who continued to provide crime prevention and deterrence in both towns and rural areas. Serious offenders fleeing the watch or local constables still aroused the whole county under the old systems of the ‘posse comitas’ and ‘hue and cry’.

Successive monarchs and then their parliaments grafted new functions and responsibilities on the watch/constable/justice/sheriff system as social and economic development imposed ever greater pressures on the peace and order of the realm. But the ancient Saxon principle of collective responsibility for local peace and good order survived, despite many changes.

The division of labour between the constable and the justice also remained clear. It was for the constable to support and oversee the ‘watch and ward’ of his citizens, to quell disorders and riotous behaviour, and to detain anyone found in breach of the peace in his locality. Constables did not have the sole right, nor any

---

20 Kent, J.R. (1986) pages 55-56
21 ibid page 67
22 Critchley, T.A, op cit. page 6
23 ibid
24 ibid pages 11-12
special responsibility, to bring misconduct and criminal offences before the courts. That duty still rested with individual aggrieved citizens who, for that purpose, had direct recourse to the justices. All citizens had a duty to prosecute miscreants who did them harm, and the right to bring complaints to the justices for that purpose. The early English criminal justice system laid prime responsibility for the prevention and suppression of crime and for the detention and prosecution of known offenders against the criminal law, firmly on individuals and their communities. Only where that first line of defence failed did it charge the justices with inquiry into reports of crime, and with responsibility for the identification, detection and pursuit of criminals and other offenders who had escaped the local community and their constable.

A Royal Commission sitting in 1839, reviewing the development of policing arrangements in England and Wales, reported that:

'It will be found that the function of inquiry was shared as a principle of the action of the whole executive agency for the preservation of the peace. It is specified in those of the later commissions of the justices of the peace, which invested them with the distinct functions of conservators of the peace and charged them to inquire diligently respecting offences committed; implying functions, like those of the coroner, of inquiry on the occurrence of an infraction of the law, i.e. inquiry before the offender is ascertained or apprehended, as well as the judicial functions of hearing and determining on the sufficiency of the evidence.'

In common law it was the duty of the constable and his community to maintain the peace and prevent offences in their locality. They were also jointly responsible for the 'quick and fresh pursuit' of offenders and for raising an immediate 'hue and cry' where the miscreants escaped them. It was then left to the justices to identify, seek out and prosecute criminals who had escaped that instant pursuit. Whether the miscreant was apprehended by the community or subsequently detected by the justice, it was still for the victim of the crime to prosecute him, and to present him before the justices for that purpose. In that process neither the local constable nor any other representative of the community

---

25 ibid page 7
26 Royal Commission etc., op cit. page 93 para. 106
27 ibid. para. 103 pages 91 to 92
28 ibid. para. 105 page 92
29 Critchley, T.A., op cit. page 7
30 Royal Commission etc., op cit. page 97 para. 119
had any special or specific role. The evolution of the office of constable after the Conquest, and his growing peacekeeping and instant pursuit responsibilities, did not absolve individual citizens from their ancient responsibility for the good conduct of their neighbours. The same 1839 Royal Commission reported the Elizabethan, Sir Thomas Smith, as saying, in praise of his own time, that:

‘The parish which doth not his dutie, but letteth, by their negligence, the theife to depart, doth not only pay a fine to the King, but must repay to the party robbed his damages. So that every Englishman is a serjeant to take the theife, and who sheweth negligence therein do not only incurre evil opinion therefore, but hardly shall escape punishment.’

Despite having been elected by his peers, and having no greater actual obligation in law than his neighbours to keep the peace in his community, the constable nevertheless ranked high in the social order. The same Elizabethan writer reports that he was given an importance equal to that of the justices.

But not for long. The 1839 Royal Commission, commenting on the sorry state of the constables and watchmen in its own time, observed that:

‘We apprehend that the office of constable must have very early fallen into inferior hands, from the difficulty of finding in the poorer and less populous districts a sufficient number of persons qualified or inclined to perform the duties.

As society advanced, the duties themselves became more heavy and complex. The grounds of complaint made by...[earlier commentators]...of the increase of the statutes, with the execution of which the constable as well as the justice of the peace is charged, are enormously enlarged in these...[nineteenth century]...times, when the statutory enactments of one year equal the whole of the statutory enactments of two or three centuries preceding that in which the complaint was made.’

As a consequence, ‘When persons who may be considered qualified in respect of station are chosen [to hold the office of constable] they almost all pay for substitutes, and avoid serving.’

---

31 ibid. page. 93, para 106
32 ibid. para. 111
33 ibid. page 108, para. 134
34 ibid. page 109, para. 135
The decline in the quality of constables paralleled a fall in the standards and reputation of the watchmen who were paid substitutes for the ratepayers required to keep night-time watch and ward in the towns. The latter became figures of ridicule while the former, regretfully, became associated with drunkenness, indolence and even corruption, in the enforcement of the law. So serious did the problem become that the justices (or magistrates, who were the permanent, paid justices in the towns) took matters into their own hands. They despaired of the locally elected constables, and began to appoint their own officers to act under their authority to ‘inquire’ into crimes and offences within their districts. These new additions to the forces of law and order were sworn as constables by the magistrates to equip them with all the common law powers of that ancient office, but they were not selected or elected by the local community. The magistrate’s officers were his agents rather than representatives of their fellow citizens, and they were employed to assist the magistrate in *his* crime detection and prosecution work.

The most famous of those magistrate’s officers were undoubtedly those appointed by the Bow Street Magistrates, Henry, and (later) John, Fielding, in London after 1750. Their appearance marks the start of modern British professional policing.

**Bow Street Runners and Patroles**

In 1750 Henry Fielding recruited six Westminster householders to serve as regular, paid, constables to assist him in his work as Chief Magistrate at Bow Street. Success came quickly to ‘Mr. Fielding’s people’, as they became known, and they removed a number of notorious criminal gangs from the streets of London. In time they evolved to become the famous (and later, infamous) Bow Street Runners under the guidance of John (later ‘Sir John’) Fielding, the ‘blind beak’ of Bow Street. John Fielding succeeded to the Chief Magistrate’s post on the retirement of his half-brother on grounds of ill-health in 1754. The plain clothes Bow Street Runners, and their uniformed ‘Patrole’ colleagues, developed a national reputation and significance in the effort to control crime and disorder in early industrial England. Contemporary commentators were careful to distinguish between the Runners and Patroles, who were sworn as constables

---

35 Reith, C. (1943) *page 16*
36 Heron, F.E. *page 1*
38 Armitage, G. (1935) *page 47*
39 Browne, D.G. *op cit. page 28*
40 Armitage, G. *op cit. page 60* and *ibid page 29*
by their magistrate employers, and the local and parish constables who continued to patrol the capital. The former were generally termed ‘officers’ while the latter continued to be called ‘constables’. The distinction was important at the time and the practice will be followed, so far as is possible, in this account of my research.

The Runners provided a model for others to follow. Police Offices along the lines developed by the Fieldings sprang up across London, and then spread to other cities following the passage of the Middlesex Justices Act of 1792 (3 Geo III cap 53). However, Parliament was never quite convinced of the propriety of this development in the English criminal justice system. The Police Offices Act, as it came to be called, always had a time limit on its operation. At regular intervals it returned to Parliament for review and renewal.

Fielding’s innovations spread throughout the nation but their influence on the criminal justice system was evolutionary not revolutionary. The Fieldings did not reshape or reform the system. They merely added yet another layer to the incoherent structure of parish constables, watchmen, courts leet, private watch associations, bailiffs, sheriff’s men, beadles and the host of other petty officials and placemen that had emerged from the various local and national attempts to combat the seemingly inexorable and unpredictable growth of crime, disruption and disorder in British society.

Since Henry Fielding’s action in employing officers and so creating the Bow Street Runners did not directly depart from the line of development of policing from its Saxon and Norman origins the innovation enjoyed general, if occasionally grudging, acceptance. By Fielding’s time the justices had a long tradition of relying on locally elected or selected constables to assist them in their work. His Runners did no more than formalise that arrangement in the person of the full-time, paid, magistrates’ officer.

Under the Police Office system the magistrates remained wholly responsible in law for the conduct and actions of their officers. In time, the Fielding’s and their successors and imitators began to publish lists of wanted criminals and circulated descriptions of fleeing felons. They thus firmly established themselves as the founders and predecessors of the intelligence systems and

---

41 Browne, D.G. op cit. page 45
42 Tobias, J.J. (1970) page 34
43 Browne, D.G. op cit. page 47
44 Hart, J.M. (1951) page 23
45 Radzinowicz, Sir L (1956) page 127
46 Stead, P.J. (1985) page 25
criminal records departments that are now so much a part of all modern police services.

Police offices on the Bow Street model had their successes, and they continued to attract a strong body of support even after their limitations were exposed. Inevitably however, they soon became part of the muddled, localised system of crime control that failed, in the minds of both public and politicians, to bring peace and order to the lives of ordinary people. The full onset of industrialisation and urbanisation finally overwhelmed these increasingly ramshackle arrangements. A dramatic increase in the geographic and social mobility of the British scattered the stable communities of like minded citizens, equally willing to support each other and their elected constable or watchman, that was the foundation of Saxon peacekeeping and crime suppression.

The new industrial towns in particular became increasingly uncontrollable and a haven for criminal communities.

'Manchester's 40,000 people in 1770 were 187,000 by 1821; Leeds, Sheffield and Birmingham all doubled in thirty years. Outside these great concentrations the whole face of the country altered. In the century ending 1821, for all practical purposes, all that was left of its medieval common-fields and commons was enclosed, or some 6 million acres.'

In truth, 'We have, then, a people fundamentally changed in spirit but enclosed in an ancient government frame.'

Between 1805 and 1817 the number of committals to prison and executions ordered by the courts in England and Wales rose from just under 4,000 to more than 30,000 per year. Drastic reform in peacekeeping, and in crime prevention and detection, was deemed necessary to avoid social breakdown. That was a real possibility at the time of revolutionary events unfolding on the Continent. From that impetus the modern British professional police service was born.

The New Police

The starting point of my thesis is here; at the point of the emergence of a full-time professional police service from the collapse of the uncomfortable amalgam of Saxon self-regulation with Norman views on kingship, under the enormous

47 Reith, C. (1943) page 15
48 Feiling, Sir K. (1950) page 798
49 ibid page 797
50 Report of the Royal Commission etc., op. cit. Appendix no. 1
pressures of social change and industrialisation. I begin with a re-examination of the establishment and development of the London Metropolitan Police Force since that was the progenitor and model for the modern police service in mainland Britain. I then move on to look at the issue most clearly connected with the police in the modern mind. That is, how those new arrangements dealt with, and continue to address, the problem of the control and suppression of crime and criminality in an increasingly urban, democratic and industrialised society. I conclude with an assessment of the effect of the involvement of the professional police in the attempt to suppress crime, and on the consequences of that development for policing and the criminal justice system.

The emergence of the London 'Bobby' and the equally, or perhaps even more, famous Scotland Yard detective, as the twin bastions of the security of the citizen and the bafflement of wrong-doers in British society is, by any standards, a major event in the history of the nation. Arguably, it has had an impact throughout the Western world. This work has its origins in a retired insider's opinion that its deep significance has not yet had the rigorous, critical attention its importance deserves.
Sources and Methods

I begin with an examination of the history of British professional policing. The sources used are principally those documents and other contemporary material now preserved in the public record, supplemented by the literature on policing. From that research I draw new conclusions about the origins and early development of present-day policing and frame proposals for its reform designed to improve its performance and to resolve some of its major problems. Clearly, the methods used will need to link the history and development of British policing to the solution of its present problems; that is, draw together and find common ground between the contributions of historians and social scientists to this field.

I start with a short résumé of the difficulties faced by my research, both practical and in using historical sources for these purposes. I then discuss the views of historians on the value and utility of a study of history as a means to find solutions to present-day problems, and show that there is considerable divergence among them on that issue, with the generality regarding my purposes as lying somewhere between controversial and impossible on any reasonable scale of feasibility. Next, I consider the views of those social scientists interested in policing as a social institution to show that there is no consensus among them on how the objective I have set myself might best be achieved. Finally, I set out my solution to these problems, giving the reasoning that led me to it.

Practical difficulties

In 1943 Charles Reith, a prolific and widely respected writer on British policing, said,

"In the records of the nations there is, surely, no more curious phenomenon than the neglect by British historians of the study of their police ... it is possible to examine thousands of volumes of history, biography and memoirs ... without finding, at best, more than a cursory statement of the fact and date of police establishment. Writers on the subject of legal and constitutional history are equally unimaginative."

In a footnote he adds, "Even more deplorable than the silence of historians on this subject is the absurdity of their occasional misstatements."

---

1 Reith (1943) page 31
His view of the neglected condition of British policing history is supported by Sir John Moylan, a high (Assistant Under-Secretary of State) Home Office official who, during his long and distinguished career in government, held the important and influential post of Receiver for the London Metropolitan Police from 1919 to 1945. Speaking as someone with a wide experience of and long intimate contact with British professional policing, he said in 1946;

'The detailed story of the difficulties which the new police had to surmount in their first ten years has been told for the first time by Charles Reith in [his 1943] 'British Police and the Democratic Ideal.'

Reith's view has been more recently and authoritatively confirmed by Sir Robert Mark, Commissioner of the London Metropolitan Police from 1972 to 1977, who said,

'there is scarcely a single book in Great Britain dealing with the police which can be said to be worth serious consideration.'

In addition, in the Guide to the Public Records Office it is noted that, 'no calendars of Home Office papers later than 1775 have ever been published.'

Taken together these comments give some indication of the practical difficulties I faced. My research discovered few authoritative sources of enquiry into, or analysis of, the origins and development of British policing. It also revealed that the records of government relating to an event 'so important, so significant and so far-reaching in its consequences for the nation' are not collated in any form that will aid research.

Sources

In these circumstances a deliberate decision was made to return to what Arthur Marwick calls 'primary sources', i.e. those sources 'that come into existence during the actual period which the historian is studying' rather than to place reliance on 'secondary sources' or 'those accounts written later by historians looking back upon a period in the past'. Two main sources have therefore been used. First and principally, reference is made to the original working documents and other material produced by the civil servants and other public officials.

---

2 Moylan (1946) page 3
3 Critchley, T.A. (1978) Foreword
4 Public Records Office ZBox 2 Introduction pps. 1-2
5 Reith (1943) op cit
6 Marwick (1989) page 199
7 ibid.
engaged in the creation and establishment of the British professional police service, and now stored in the Public Records Office (PRO) at Kew in London (now renamed the National Archive). Secondly, contemporaneous Parliamentary papers relating to these events have been examined, using copies also available at the PRO. Only marginally are these principal primary sources supplemented by reference to other contemporary material, e.g. newspapers, hand-bills, and the like, and then to subsequent, secondary commentary by historians and other writers.

Public and Parliamentary papers

The main sources used are therefore those created in the nineteenth century by public officers and other officials acting in the course of their day-to-day duties, and for their own purposes as they saw them. There is no reason either to suppose or expect that they had the needs, interests or concerns of future researchers into the history of policing in mind as they worked. Hence, while the context of this research may justify recourse to original material, its use raises other problems and difficulties.

The documents examined at the PRO deal with events more than a century and a half ago and have been in storage, with varying degrees of success, for more than a hundred years. Understandably, some of them are close to disintegration from mere age, and most are now in very fragile condition. Many were found to be jumbled, damaged and even incomplete as a result of sometimes careless handling.

In addition, the material examined dates from well before any application of technology to personal communication. The documents and other papers are almost entirely handwritten, those intended for private circulation, as most were, being recorded in the writer's informal hand rather than the more readily readable copperplate reserved for public papers. Matters of considerable importance are often discussed by means of hastily scribbled notes between people familiar with each others business hand, and using the written colloquialisms and linguistic mannerisms of the day. Deciphering them has sometimes been as much art as science.

The fundamental problem with the use of these original, working documents for the purposes of research is however, that by no means all official papers find their way into the Public Records Office. Every Government department had (and has) a system of archiving documents no longer in active use, and a policy for
deciding when and how to activate it. Such policies and practices are subject to constant review and revision, not all of which is fully recorded for the benefit of posterity. And even if such alterations in policy are included in departmental records the relevant documents describing disposal policies and alterations to them are not necessarily or regularly among those selected to be sent for permanent storage.

In general then, the system that has produced the mass of documents and other material now held in the Public Records Office is simple enough in principle but far from ideal from a research viewpoint. It begins when official papers reach the stage at which they are no longer considered to be of value to the government department(s) in which they were created. At that point they are sorted into one of two basic categories; those which, for various (and varying) reasons, are to be sent for permanent retention, and others that are to be destroyed forthwith. Those to be retained may then be subject to additional filtering processes in which (then) current perceptions of sensitivity, secrecy, importance, etc. may be applied, and some material removed, creating otherwise inexplicable gaps and discontinuities in the papers that eventually arrive at the PRO. The difficulties in drawing reliable conclusions about the course and nature of past events from such material as happens to be found in the Public Records Office are obvious; are recognised by this research, and are more broadly discussed later in this chapter.

The position with Parliamentary Papers is somewhat different. Politicians have a generally high opinion of the importance of what they say and do. What occurs in Parliament is therefore usually fully recorded, and in some detail, which creates its own problem – that of sheer volume and its corollary of sorting wheat from chaff. The chief difficulty for researchers however, is that Parliamentary records tend to be classified and filed primarily in the date sequence in which they were created rather than by topic or subject. Following a thread of social or political development through the records of Parliament over time, which is a common task for researchers and commentators, can therefore present wearisome difficulties. Nevertheless the virtues of comprehensiveness and completeness are sometimes inestimable.

**British Library Newspaper Library**

The content of the British Library Newspaper Library at Colindale in London unavoidably combines the difficulties for research found in the material held at the Public Record Office and Parliamentary Papers. The Newspaper Library is
simply massive in volume and almost entirely catalogued by date. Titles of papers and publications are listed, but only those titles that are physically present in the collection are catalogued rather than all those published, and then only those issues of those titles that have actually been found and preserved. The result is an erratic and incomplete patchwork of newspapers and periodicals of truly intimidating size which can be of great value and interest only if a specific issue or event and a short period of time are the research parameters.

Otherwise the difficulties are immense, especially if, as is also the case with Parliamentary Papers, the interest is in a continuing social problem, trend or process. Helpfully, the London ‘Times’ has a separate and very useful subject index, but it is compiled on an annual basis leading to a troublesome process of listing and sifting entries across a number of separate volumes if any subject is to be examined over more than a year or two. Additional difficulties are caused by the journalistic habit of reclassifying an issue as it develops. A columnist’s gossip can metamorphose through a newsworthy scandal into a full-scale political crisis, its description and position in the format of a broad-sheet, and hence its place in the subsequent annual index, sometimes changing almost daily in the process. However, if a reference to a subject or issue in ‘The Times’ can be found it often gives the true flavour of, or a new perspective on, a long-forgotten controversy, as well as a valuable pointer to other contemporary publications.

The risks of history

In any event and whatever sorts of original material, papers or documents are chosen for research, reliance on contemporary records has its own well-recognised and inherent dangers. The unpredictable effect of fortuity in what does, or does not, survive from the record of the past is always a factor in drawing conclusions about historical events, and has already been identified as a particular problem for this research. In addition, researchers are bound to have to rely not only on what chance provides, but also on that often small section of those involved in the events under review who have the habit, inclination or responsibility to record what they do, say or see. Their memory, opinions and views may be preserved while that of other less well-informed or perhaps less literate participants, which may or may not be of greater significance, are simply not available.

But even where the researcher can be confident of the validity and significance of a contemporary record he is still faced by a subtle and awkward problem in
drawing conclusions about the nature and meaning of the events described, and one that applies particularly to this study; that of 'present-mindedness' (Commager, 1965). When we look at past events we do so with our present eyes. We tend to judge and interpret past actions and decisions from our own standpoint rather than from that of the participants. More importantly, we cannot do other than to look at the past in the light of our present knowledge of it. We often have a range of received opinion on how the events we are looking at progressed and turned out and what their consequences were, information and conclusions which were not, and could not have been, available to the participants.

Our difficulties in seeing events through the eyes of the participants and our privileged knowledge of the outcome of the actions and decisions we are considering inevitably colours our interpretation of them, leading, among other errors, to a very real danger of 'a post hoc, ergo prompter hoc attitude toward history', a problem of particular relevance to this research. My long involvement in the practice of policing, which has been so great an advantage in other aspects of my work, is a potent source of potential error in this respect. I have had constantly to be on guard against 'present-mindedness' in reaching my interpretations and conclusions. In that endeavour, I am especially grateful for the support and guidance of my supervisors.

Particular care in the use of contemporary sources has also been necessary in this research because the actions and decisions most closely examined; that is, the creation and establishment of the British professional police service in the early and mid-nineteenth century, aroused passionate social and political opposition at the time. Indeed, four Parliamentary attempts between 1793 and 1822 to introduce a disciplined, paid, professional police force into the British criminal justice system foundered on formidable reefs of public outrage and vehement vested interest. It is unsurprising therefore, that such records and documents as are now available for research, even those produced at the time by the most detached and dedicated of public servants, were found to reflect the political and social sensitivity of the subject matter as well as the prejudices and biases of their authors. Both special pleading and partisan political attitudes are detectable in the public records examined, and they have had to be treated accordingly.

---

8 Collingwood, R.G. (1946) and others
9 Commager, (1965) page 46
Literature on policing

My primary research decision to return to original sources was reinforced and amply justified by an almost immediate discovery. I found that the original purpose of professional policing is wrongly stated, widely and authoritatively, in the literature on the British police. The definition used, known to generations of policing professionals as the 'Primary Objects', is incorrectly attributed to one of founding fathers of the modern police service, Richard Mayne. Further, my research has now shown that the sentiments expressed in the statement are contrary to the quoted source's own publicly recorded views on the issue of the purposes of policing. The origins and effects of that double error, together with the provenance of the 'Primary Objects', are fully explored in this thesis.

A consequence of that discovery is that only after, and not before, my analysis of original and contemporary records was well advanced was reference made to authors and commentators on the history of British policing. Such recourse to academic literature and comment then found it, regrettably, to be largely unhelpful if not, as Reith predicted, occasionally positively misleading.

Libraries

Dealing with the literature on policing posed its own problems. As a part-time research student working from home some 100 miles from campus I have, of necessity, had to make use of library facilities beyond that provided by my own University. In addition to the Pilkington Library at Loughborough, those visited with the help of my supervisors and the kind permission of the appropriate authorities were; the British Library of Political and Economic Science at the London School of Economics (LSE); the Learning Resource Centre at the University of Hertfordshire, and the British Library in Euston Road, London, where I was granted a Reader's ticket.

The three University libraries provided a solid base for the sociological aspects of my research and for the discussion of the present problems of policing. The British Library's comprehensive computerised cataloguing system immediately produced some useful support for Reith's complaint that the history of British policing is a much neglected subject. A search of the reference material in the computer catalogue on the word 'police' produced no less that 10,242 entries. Refined to 'metropolitan police' 367 entries remained. Further narrowing to 'metropolitan police, history' reduces the number to a mere 75, of which only 37 could make any claim to deal with the origins and development of that
organisation, which is the principal subject of the historical part of my research. I am informed by my calculator that these figures show that only 0.36% of the literature in the British Library on policing relates to the early history and development of that most important element of our criminal justice system. My hope is that this work may add at least a little to that meagre store.

Uses of history - the historians view.

Beyond the risks of error or omission, the broader issue of what reliance can be put on even the most accurate and complete record of, or commentary on, the past has long been debated. On the one hand a considerable body of historians follow what has been described as the ‘established professional practice...of reason and rationality...applied to the historical sources” 10 For this group, ‘in the main the notion of historical research implies research in primary source material...without primary sources there is no history.” 11 This ‘establishment’ school accepts that ‘what is crucial to historical study is the nature of evidence...This evidence is to be found in the sources, relics and traces left by the past.” 12

On the other hand it has been argued that both the historian and his sources are necessarily products of the society they inhabit and that therefore, ‘The belief in a hard core of historical facts existing objectively and independently of the interpretation of the historian is a preposterous fallacy, but one which is very hard to eradicate’. 13 This ‘subjectivist’ school hold that ‘The history we read...though based on facts, is, strictly speaking, not factual at all, but a series of accepted judgements.” 14

Both schools of thought accept that the concept of ‘facts’ in historical research is a contentious and ultimately irresolvable issue; a view few would dispute. After all, we can never revisit the past in order to check our interpretation of it. Even the outcome of historical events is subject to the same caveat as any examination of the literature of history will quickly show. Indeed, an inability to test interpretations in any objective way is commonly said to distinguish history from the natural sciences. The debate among historians is therefore not about whether indisputable historical facts do or do not exist, but rather how we should approach

12 ibid, page 380 at 4.
14 Barraclough, G. (1955) page 14
whatever evidence and information we have about the past and what use we can make of it.

Using the already quoted examples, Carr, a principal representative of the subjectivist view that ‘History...is a social process, in which individuals are engaged as social beings’,\(^\text{15}\) regards the dual function of historical research as, ‘To enable man to understand the society of the past and to increase his mastery over the society of the present.’\(^\text{16}\) Carr and those who share his opinion therefore agree with Lord Acton’s remark that, ‘History properly so-called can be written only by those who find and accept a sense of direction in history itself.’\(^\text{17}\) In this view it is both possible and appropriate to draw broad generalisations about the past nature and future direction of human progress from a study of history.

By contrast Arthur Marwick well expresses the ‘established’ view that historical research can only be ‘an interpretation of the past, one in which a serious effort has been made to filter out myth and fable, to...open up the past, to make the past...known and comprehensible.’\(^\text{18}\) Marwick’s belief is therefore, that ‘there are no general laws, is no over-arching theory, in history’\(^\text{19}\) and hence that ‘History is a very poor predictor of future developments and future events.’\(^\text{20}\) Indeed, and to illustrate the breadth and depth of the dispute about the uses of history, a ‘post-modernist’ school of historians\(^\text{21}\) take a separate and extreme line on these matters, arguing that since ‘History can never reconstruct the past as it actually was’ its content is (relatively) unimportant and therefore, ‘historians...[should place]...form (the historical representation of ‘history) as prior to content (the reality of ‘the past’).’\(^\text{22}\) For historians of this school, style and manner of presentation is an essence of history which evidence and content can only supplement.

The problem is that none of these views precisely meets the needs of this research which seeks to discover whether a connection can be made between the history of the development of the British police service and its present problems. Clearly, any research method adopted for that purpose will not only need to accommodate the divergent views of Carr and Marwick and the post-modernists' rejection of

\(^\text{15}\) Carr, E.H. (1986) page 49
\(^\text{16}\) ibid.
\(^\text{17}\) Carr, op cit. page 126
\(^\text{18}\) Marwick, A. (1989) page 3
\(^\text{19}\) Marwick, op cit. page 380 at 3
\(^\text{20}\) Evans, R, in Carr, op cit. Introduction, page xxiv
\(^\text{21}\) e.g. Hayden White, Richard Rorty, Keith Jenkins and others.
\(^\text{22}\) Alan Munslow 'Where does history come from' in History Today, Vol. 52 issue , 3 March2002, page 19
both, but must also provide a link between historical analysis and the solution of current social problems.

The methodological challenge is thus that set out at the beginning of this chapter; to draw together and find common ground between the study of history and the present methods of the social sciences. Fortunately, a review of the current views of historians allows a cautious first step to be taken in that direction by adopting Marwick's view that "both historians and scientists are concerned with discovery...involving rigorous checks of evidence and conclusions." That step is possible because, while it amounts to a rejection of the post-modernist approach, it does not totally dismiss Carr's views on the predictive value of history, even though his stated purpose was to 'answer...the foolish remarks of Popper, Isaiah Berlin etc. about history' and 'in the name of reason' to reject their '[scientific] way of doing things.'

The first stage in finding a solution to my methodological difficulties is therefore completed by a decision to recognise and accept the common ground between the historian and the scientist identified by Marwick, and adopt his evidence and outcomes-based approach to the history of the development of British policing. On that base, I then propose to examine the Carr-style question of what consequences, if any, its history has had for the current organisation, structures, culture and behaviour of the professional police service.

Sociological methods

Given that decision the next phase in my methodological inquiry must be to identify suitable and compatible methods from among those in use by sociologists interested in policing. That will encompass a review of the sociological field of policing and the research domain in which it can be included; that of organisation studies.

Sociology of policing

Professor P. A. J. Waddington is both widely experienced in the practice of policing and a well-respected and significant British contributor to the sociology of the police. He has however, been less than complimentary about the methods and approach of others at work in his field. He has said that sociologists constantly claim that, 'The police are unfair, they enforce the law partially, discriminate against those of low status, violate civil rights, create rather than

---

23 Marwick, op cit page 152 at 10
24 Evans, op cit. page xix
prevent crime and are the unwitting dupes, if not the willing accomplices, of capitalist oppression. Such is the dominant image of the police which sociologists present as fact established by research.\(^{25}\) He adds that, 'In fact, most sociologists have not bothered to examine how and why the police act as they do...for many sociologists the aim is not to understand the police but to bring them into disrepute.'\(^{26}\)

The latter part of Professor Waddington's comments on his sociological colleagues is of particular interest. It shows that the sociology of the police, as it is commonly practised, has characteristics in common with the study of history. Professor Waddington clearly considers that a major (or the) purpose of social research in his field is the anthropological objective of 'understanding' policing, i.e. to observe, describe and report policing activity with the object of informing both the researcher and his readers. In this view of his subject matter Waddington is supported by Sir Karl R. Popper whose broader opinion is that, 'Today...sociology has resigned itself more and more to becoming one element within social anthropology; that is, the social anthropology of a very specific form of society – of the highly industrialised Western European.'\(^{27}\) and that, 'The former theoretical sociologist...must be happy to find employment as a fieldworker...his function is to observe and describe the totems and taboos of the white natives of the Western European countries and of the United States.'\(^{28}\)

Using Popper's social anthropological perspective it is possible to divide writers on policing into two categories. One group, the larger, attempts to describe the role and functions of police officers in some way or from a particular perspective, and then to explain how and why those roles and functions are, or are not, carried out.\(^{29}\) On the other hand sociologists whom Popper might wish to describe as having an inclination toward field-work generally adopt a 'fly-on-the-wall' or 'participant-observer' stance in order to discover what the police actually do, rather than what they claim (or are supposed, or are suspected) to be doing.\(^{30}\) I should say at once that, while this Popperian categorisation may be illuminating and even instructive the reader should not put too much weight or reliance on it.

---

\(^{25}\) Waddington, P.A.J (1983), page 1

\(^{26}\) ibid page 15

\(^{27}\) Popper, K. R. (1996) page 68

\(^{28}\) ibid, page 69

\(^{29}\) e.g. Banton (1964); Bittner (1975); Black (1980); Cain (1973); Dixon (1997); Fleming (1995); Goldstein (1977) and (1996); Lambert (1970); Manning (1977); Punch (1983) and (1985); Reiner (1991) and (2000); Skolnick (1996); Waddington (1999); Whitaker (1979); Wilson (1968).

Some writers will fall into both categories if their whole output is considered (Professor Waddington is an example). And I suspect that few, if any, of the authors mentioned will necessarily either accept Popper's view or the use made of it here.

All that is implied by this tentative exercise in methodological classification is that while it is to be expected that sociologists of the police will share Marwick's view of the value of scientific methods, some objective support exists for Popper's contention that a social anthropological perspective will cover the majority of their research into policing. Unfortunately, that approach has too much in common with the 'interpretation' purposes of historians to supply the necessary present-day, problem-solving, element required to meet the needs of my research.

**Organization studies**

Turning then to the broader field of social enquiry into which policing can be set, i.e. the study of organisations, it can be said at once that the police service clearly satisfies the definition of an organization used by Blau, P. in his influential 1974 work, 'On the Nature of Organizations', i.e. 'The defining criterion of a formal organisation – or an organisation for short – is the existence of procedures for mobilising and co-ordinating the efforts of various, usually specialized, sub-groups in the pursuit of joint objectives.'

Equally, the police service accords with Thompson's view of 'the organisation as a problem-facing and problem-solving phenomenon.'

---

**- paradigms and incommensurability**

Regrettably however, the diversity of methodologies now in use within organisation studies, and the specificity of their application presents an immediately identifiable obstacle to their use in this research. For example, the Handbook on Organisation Studies lists at least six, and possibly as many as sixteen, differing 'paradigms' in current use in the study of organisations depending on how that concept is defined. The problem is that there is little, if any, common ground between the various paradigms. Responding, it would seem, to the combined (but not joint) influence of Kuhn, T. (1970) and Feyerabend, P (1974) sociologists of organisations have argued that each of the

---

31 Blau, P. (1974) *page 29*
32 Thompson, J. D. (1967) *page 9*
33 Clegg, et. al (1996) *Introduction*
paradigms that have emerged in their field are not simply different approaches to the same subject but amount to a separate and distinct 'scientific revolution'. As such, the methodology arising from such revolutions 'is not only incompatible but actually incommensurable with that which had gone before.' It is therefore argued that there can be no compatibility, and indeed no reliable communication, between the various 'paradigms' in the study of organizations.

Moreover, we are unlikely to find a "solution" to the "problem" of paradigm incommensurability. Even if we did find a "solution", there is no guarantee that it would be accepted; not if it let down the defences that some individuals believe necessary to protect "alternative" work. So, for those reasons we do not believe the paradigm debate can be resolved. ... The genie is out of the bottle. Indeed, the diversity and proliferation of theoretical paradigms, coupled with the spread of the view that they are incommensurate has, in recent times, reached the point at which 'a plethora of alternative approaches' to the study of organizations has 'emerged which directly challenge the supremacy of functionalism and normal science.'

The 'paradigmatic' approach is not confined to the study of organisations. It is also identifiable in the sociology of policing. In his 'Conduct Unbecoming: A Social Construction of Police Deviance and Control.' Maurice Punch says, 'Underlying my selection of data and my interpretation of material for this study is a theoretical perspective... Working within the Symbolic Interactionist 'paradigm' my approach particularly builds upon and extends those authors who adopt an interactionist perspective on the police.'

- methodological proliferation.

While it would seem that Kuhn and Feyerabend both propose a concept of 'incommensurability' as between the paradigms of organizational studies, Feyerabend is individually responsible for promoting and encouraging an unrestrained proliferation in the wider field of the methods and theories of the social sciences. In an essay published after Feyerabend's death in 1994, Paul Hayningen-Huene credits Feyerabend with this development saying, 'The weakness of a theory ... may only appear if facts as seen from an alternative theory are allowed. This idea is the core of Feyerabend's view

35 Clegg, S. R. et al, op cit. page 8, col. 2
36 ibid. page 2, col. 1/2
of the necessity of theory proliferation. If it is the case that theories are mainly testable through reciprocal confrontation, then his (Feyerabend's) empiricist persuasion demands that alternative theories should be at one's disposal."  38

When coupled with Kuhn's concept of 'incommensurability' the effect on the sociologists of organizations and others engaged in social research is apparent and has already been described. It is, indeed, in full accord with Feyerabend's own preferred methodological slogan, 'Anything goes!'

It must be clear from the preceding discussion that there is little or no common ground between the various methodological 'paradigms' of organisation studies, and that to select one will raise objection, or even rejection, by every other. As Jackson and Carter (1991) put it, 'What it (incommensurability) implies is that each paradigm must, logically, develop separately, pursuing its own problematic and ignoring those of other paradigms as paradigmatically invalid.' 39 Paradigmatic incommensurability and methodological proliferation thus stand in the way of attempts to find common ground among those engaged in organisation studies. That being so, it must surely also preclude any attempt to establish a link with other academic disciplines, including therefore the study of history even if it is of a 'scientific' kind.

Popper and the scientific method

Thankfully, despite the disappointments just described, my review of the methods used in the sociology of policing and in organisation studies eventually pointed me in a more fruitful direction and toward Sir Karl R. Popper. His views had come to my attention in two different contexts. First in the discussion of Carr's views on the uses of history, and second as a methodological source for Blau's study of organisations. In following up on those two contacts with Popper I discovered that he had delivered a lecture in Oxford in November, 1967 in which he discussed the possibility of drawing social scientific hypotheses from historical data. Significantly for my purposes he had said on that occasion that, 'all those historians and philosophers of history who insist on the gulf between history and the natural sciences have a radically mistaken idea of the natural sciences.' 40

40 Popper, K.R.(1994) page 139
Popper’s view in his lecture was that in the interpretation of history ‘you have to start from a problem’, and that ‘A historical document, like a scientific observation, is a document relative to a historical problem. And like...[a scientific]...observation, it has to be interpreted.’\(^\text{41}\) He suggested that a scientific historian should attempt ‘to reconstruct the problem situation in which the acting person finds himself, and to show how and why his action constituted a solution to the problem as he saw it.’\(^\text{42}\) This ‘situational analysis ...[approach]... permits the critical discussion of our tentative solutions – of our attempts to reconstruct the situation...this...is indeed, ...much...the actual methods of the natural sciences.’\(^\text{43}\) Popper also specifically accepted that, ‘in the social sciences...situational analysis can sometimes be provided by historical research’ \(^\text{44}\)

Popper’s lecture seems precisely to address the area of my interest, i.e. the common ground between historians and social scientists. At first sight his ‘situational logic and analysis’ methods should provide a complete answer to my methodological difficulties. They are claimed to be entirely appropriate to a study of the history, including therefore the development, of British professional policing, and are equally acceptable as legitimate in the social sciences. However and on closer examination, Popper’s methods are not as unproblematic as they appear. A major problem had to be addressed before they could properly be applied to my purposes.

**Science as a method**

Popper’s is a scientific method and although science is recognised and accepted as appropriate and applicable among sociologists, including those working in the field of policing, it is not so readily acceptable among historians. While ‘establishment’ figures can be found to say ‘that scientific method is the approach to be followed in doing history’,\(^\text{45}\) they share with the generality of historians grave doubts about its full application to their subject-matter.

On this issue Popper talks in his Oxford lecture of history being properly concerned with ‘interesting historical problems...if we want to understand the world in which we live’,\(^\text{46}\) and of the historian being required, ‘to give objective

\(^{\text{41}}\) ibid page 145  
\(^{\text{42}}\) ibid page 147  
\(^{\text{43}}\) ibid page 148  
\(^{\text{44}}\) ibid page 170  
arguments in support of his situational analysis. He claims in his lecture to have solved 'the problem of historical relativism', in that in situational analysis 'There is no criterion of truth. But there is something like a criterion of error...knowledge can grow through the critical elimination of error. This is how we get nearer the truth'. But a careful reading of his script also shows that, while he advocates scientific objectivity in historical research, he does not specifically describe or discuss how the validity of historical conclusions or interpretations may be objectively tested. By that omission he left unanswered the view of many historians of all schools of thought that a scientific approach to history is ultimately impossible for that reason.

Nevertheless and on the other hand, he did accept that there was no objection to the use of historical data as the source of his situational analysis. And he also recognised the possibility that;

'many [historical] conjectures that may appear to us to be true at one stage may be discovered at a later stage to be erroneous. New documents may force us to reinterpret old documents. Or they may raise new problems' of interpretation. And it is that view of the relationship between historical evidence and the conjectures that can be drawn from it, coupled with his other views on the role of criticism in the elimination of error which provides, I suggest, the common ground with Marwick and 'established' historians on which I can develop an approach to my research that will resolve my methodological difficulties.

Sources and Methods - conclusion

In this research I shall apply Popper's 'situational logic and analysis' to Marwick's 'established' view that a rational examination of the 'evidence...to be found in the sources' is the correct approach to the study and interpretation of history. I shall then add an element of testable objectivity to the combined methodology by formulating my findings and conclusions in such a way as will allow those responsible for social policy to apply them to a reform or restructure of present-day policing whose outcome and consequences can be observed, examined and above all, criticised. My proposals for police reform will therefore be open to a judgement of validity on the basis of whether or not they resolve the

47 ibid page 147
48 ibid page 143
49 ibid page 142
problems to which they are addressed. In effect, the findings and conclusions of my historical research will give rise to proposals for police reform that will amount to predictions of the outcome of future events and thus be open, at least in theory, to objective criticism and assessment both by the academic community and by policing policy makers and practitioners.

By this means I am able to find myself in agreement with Steuer that,

'Political decisions, and the public policies which result in them, are often based on little more than hunch and guesswork, combined with political bias ... Policies on such matters as crime, housing and immigration, with serious social consequences, are often plucked out of the air, with no apparent effort made either to draw on existing knowledge, or to investigate before acting...It is possible to do better by adopting a scientific approach to social questions.'

Thankfully, the common or layman's conception of a scientific approach is adequate and acceptable for my purposes; i.e. what T. H. Huxley once called 'nothing but trained and organized common sense', and Popper describes as 'the method of trial and the elimination of error'. That is so because, pace both Hume and Popper, the epistemological issue of the validity of the inductive methods of science remains, by common consent, unresolved. Science, as it is commonly practised and understood, therefore remains the most widely recognised and accepted way of finding solutions to problems both within and, importantly for my purposes, beyond the academic community.

I should make it clear however, that I do not claim, at this stage, that my methods will apply in any context other than this research, or that they have any wider significance. In particular I do not say that this thesis constitutes or contains a 'scientific history' of British policing. That is an enterprise far beyond the scope of this work.

But, put briefly, my methods will:

a) be scientific to the extent that they are based on empirical evidence and observation and apply 'situational logic and analysis' to an identifiable

---

51 Huxley, T.H. (1894) The Method ofZadig
52 Popper, K.R.(1994) Chapter 1 page 3
53 Hume, David (1776) IV.ii.32, Popper, K.R. (1959) page 20
issue or problem,\(^{55}\) that is, 'What we have to do... [is] to reconstruct the problem situation in which the acting person finds himself, and to show how and why his action constituted a solution of the problem as he saw it.'\(^{56}\) By this approach, 'science is much more like history than historians think.'\(^{57}\)

b) result in findings and conclusions formulated in a way that will allow reasoned and critical examination of them by others active or interested in the field; that is, 'What may be called the method of science...is...the critical discussion and the critical examination of our theories.'\(^{58}\) and that, '...what we vaguely call the objectivity of science and the rationality of science are merely aspects of the critical discussion of scientific theories.'\(^{59}\)

and,

c) produce recommendations for social change or action that will be open to critical testing by;

i) the discovery of historical or other objective evidence that contradicts or is incompatible with my findings or conclusions; and/or

ii) a comparison between the predicted effect of any proposals for social change arising from my findings and conclusions and their actual outcome.

Given these criteria I suggest that common ground and a viable connection between a study of the history of policing and solutions to its present problems is established for the purposes of this research – which is the identified methodological requirement.

Submission

In the preparation of this thesis my subject and my purposes have led me away from other, perhaps more complex and specific, methodologies toward an historiographical modification of Popper’s simpler and more practical critical rational, falsificationist scientific methods. The approach that I have developed is no better expressed than in some remarks made by Popper in July 1948 during a lecture entitled ‘Towards a Rational Theory of Tradition’ delivered to the Third

\(^{55}\) Popper, K.R. (1994) *Chapter 7 page 141*

\(^{56}\) ibid. page 147

\(^{57}\) ibid. *Chapter 7 page 140*

\(^{58}\) ibid. Chapter 4 page 93 at 3

\(^{59}\) ibid. Chapter 8 page 159
Annual Conference of the Rationalist Press Association at Magdalen College, Oxford. While discussing the wider issue of the methods of the social sciences as a whole he said;

'It is the task of social theory to explain how the unintended consequences of our intentions and actions arise, and what kind of consequences arise if people do this that or the other thing in a certain social situation. And it is, especially, the task of the social sciences to analyse in this way the existence and functioning of institutions (such as police forces or insurance companies or schools or governments) and of social collectives (such as states or nations or classes or other social groups).''

The account of my research begins with a re-examination and new analysis of the processes by which British professional policing came to be involved in the problems of crime and criminality and so gradually emerged in its modern form. It concludes with an examination of the major, and apparently insoluble, problems that are identified as the legacy of that early history. To the extent that I suggest that the contemporary problems of policing are only seemingly insoluble, and that a scientific approach to the history and foundations of British policing will show how those problems may finally and permanently be resolved, this thesis has the potential to make a significant contribution both to the body of knowledge on, and to the methods used in the study of, its subject-matter. It is presented for consideration on that basis.
Professional policing became a permanent part of the British social scene in 1829. On 29th. September that year Robert Peel’s Metropolitan Police Act brought his New Police to the streets of London for the first time. Some 1000 uniformed policemen began to patrol five London Divisions in their distinctive dark-blue swallow tail uniforms and reinforced top hats. But what were they there to do? What was Parliament’s purpose in introducing this new element into the criminal justice system?

Peel’s New Police

There had been demands in Parliament for improvements in the system of policing for the capital going back to 1770. In that year the first Parliamentary Committee sat and reported on the problems faced by the metropolis. But, neither its Report and recommendations, nor those of similar committees in 1793, 1812, 1817 and 1822 resulted in any action.

At 3pm in the afternoon of Wednesday 15th April 1829 the Home Secretary, Robert Peel, rose in the House of Commons to speak in support of his Metropolis Police Improvement Bill. The consummate politician knew that although opposition to his Bill lay mainly outside the House it was also strong within it. Anti-government feeling was high in the aftermath of the passage of his Catholic Emancipation Act, which had received royal assent just two days earlier. Peel had had to steer the Bill through a stormy passage in the Commons. He then watched his Prime Minister, the Duke of Wellington, perform the same duty in an acrimonious two day debate in the Lords. Against that background any proposal to tackle the anarchic condition of the policing of the nation’s capital was likely to attract fierce public opposition. Resistance was particularly strong amongst the Government’s political opponents in the Anti-Catholic League. Their fear was;

‘that the Duke of Wellington’s military government was about to introduce into England the despotic police of the continental states, with all the detestable details of espionage and domestic interference.’

In the preceding few days a pamphlet entitled ‘An Address to the King’ had been circulating. Amongst other things it,

1 Metropolitan Police Museum - exhibit
'called on George IV 'to awake in the name of eternal God, and rally his people round his throne' because a plot had been formed to set aside the House of Hanover, and raise the Duke of Wellington to the throne by the aid of the Irish Catholics about to be enrolled in the new police.'

Peel recognised that powerful sections of the public opposed his proposals for a 'new police'. Yet, on the other hand, years of agitation about the safety of London's citizens had unsettled their representatives in the House of Commons. The riotous disturbances that had bedevilled the debate on Catholic emancipation had crystallised that concern. Members of Parliament had seen too much of the inability of the existing police authorities to keep good order in the capital. Peel judged that a sufficient number of them were now finally in a mood to support positive action.

Select Committee of 1828

The committee which Peel had appointed in 1828 to consider the problems of policing in the metropolis had reached much the same broad conclusion as all its many predecessors. There was a clear need for urgent, drastic reform. In contrast to the fate of all previous reports however, events now conspired to make the mood of the House receptive to the idea of change. In opening his address Peel gently touched on those events. He said that;

"he was desirous, now that the attention of the house and the public was no longer directed to a subject which had so long excited the warmest feeling and the most anxious solicitude of all classes of his majesty's subjects, both Catholic and Protestant, of leading the House to the consideration of a topic of considerable interest as respected the preservation of the rights of property, as well as the protection of the persons of his majesty's subjects,"

by which he meant the 'existing police establishment for the prevention of crime as well as its detection.'

Reporting the findings of the 1828 Select Committee that he had established, Peel said,

---

*ibid. page 10*
*Report of the Select Committee into the State of Police of the Metropolis and of the Districts adjoining thereto (1828) Public Record Office, Parliamentary Papers (533) VI, page 1 et seq.*
*Parliamentary Reports 1829, pages 867-868*
*ibid page 868.*
"It had been pretty clearly ascertained that it was altogether unsafe, and that it had been so for a long period, to commit the care of the lives and properties of the people of the metropolis and its vicinity to the charge of the parochial watch, during that part of the twenty four hours which constituted the object of their very lax and inefficient protection."

Peel knew that the report of his own committee that lay before the House was not enough to ensure he would carry the Commons with him. Many members of Parliament shared the popular opinion that the emancipation of Catholics and the creation of a new police for London were two parts of the same government plot to destroy the ancient liberties and privileges of the British nation. So, in introducing his Bill to the House Peel was careful to say that;

'He might rest his case on the report of the [1828] police committee which lay on the table, and which clearly showed the necessity of some alteration in the existing means for the prevention and detection of crime; but he thought it would be more satisfactory to the House and the public, to state generally the grounds on which he felt himself imperatively called upon to induce the House to abandon the present system of protecting property and guarding the safety of the person."

Crime in 1829

Having begun by identifying crime as his target he turned to statistics to reinforce his case. There were no databases or complex government information gathering systems in 1829. Information on levels of crime and rates of detection of offenders was of dubious value, and kept only fitfully by local authorities. Its connection with the real situation was tenuous, and its value in political or social decision-making questionable.®

In the absence of any proven or reliable source of information on levels of crime, the 1828 Committee had decided to use the records of the numbers of persons committed to prison in each of the court areas in England and Wales during the decade up to 1828. Their reasoning was that the number of committals to prison made by a court depended upon, and was therefore some measure of, the number of active criminals living in that court’s area. Peel told Parliament that these primitive statistics showed that ‘the proportion which the number of criminals...bore to the population’ in London and Middlesex was ‘not less than

7 ibid page 868
® ibid
® Gatrell, V.A.C. and Haddon, T.B. (1972)
one person in every three hundred and eighty-three’. For the entire population of England and Wales the figure was much lower and was ‘found to be one criminal in every eight hundred and twenty-two.’

He rejected the possibility that the disproportionate number of criminals found in London and Middlesex was a consequence of growth in the population of that area. He reported that,

‘the result of a comparison between the rate of increase of population and the rate of increase of crime in the metropolis showed that the former was not in proportion to, and could not account for, the great increase in the latter; for there was an increase of forty-one per cent in the number of committals in 1828 over 1821; while there was an increase of population of only fifteen and a half percent.’

In contrast the figures for England and Wales showed that committals from the criminal courts increased by twenty-six per cent and population by eleven and a half per cent over the same period.

Unreliability of Crime Statistics

Regrettably, though Peel and his fellow members of Parliament did not know it, the information they were using was worthless. The 1839 Royal Commission on the Establishment of a Constabulary Force made that discovery ten years after these events. The Royal Commissioners then reported that:

‘At the beginning of [our] enquiry it became evident to us that the returns of the number of persons prosecuted or convicted, which in the reasonings in Parliament are usually assumed as correct indications of the state of crime within any district, cannot be relied upon for that purpose.’

Even without the benefit of that hindsight, Peel’s use of these statistics in the early part of his speech still looks odd, especially when his later remarks on the subject are considered. Toward the end of his speech Peel returned to these numbers to report that, taking England and Wales as a whole and despite an increase in population, the total number of committals in had actually fallen comparing 1827 with 1828 (from 17,921 to 16,556). Indeed, the fall in some areas was ‘very remarkable’. In Lancashire there had been 2457 committals in 1827 and only

10 Parliamentary Reports, op cit. page 869
11 ibid
12 ibid page 870
448 in 1828. In fact, by 1828 the level of committals for some felonies in England and Wales was below that reported at the beginning of the century. But perhaps we should be charitable and assume that Peel’s Committee did not pursue their enquiries far or long enough to discover those less helpful facts.

For whatever reason Peel did not dwell too long on these statistical points but quickly moved back to his main theme. He repeated that the overall decrease in committals across the country reported by his Committee was in strong contrast to the situation in the metropolis of London.

Peel and the causes of crime

As to the causes of ‘this frightful difference between the increase of crime and the increase in population’ in the metropolis he said that;

‘Many intelligent gentlemen, who took an interest in the subject, had endeavoured to investigate and determine those causes; but he must still say - and he spoke in the presence of many hon. Members who had taken an active part in the police committee - without having arrived at any satisfactory conclusions to the real nature of those causes.’

The House would have known that Peel was among the ‘many hon. Members’ who had been active in this field in the past. Six years earlier he had been Chairman of the 1822 immediate predecessor of the 1828 Committee whose Report he was now presenting to the House. But earlier failures to identify the causes of crime, including his own, did not deter Peel from exercising the privilege many of his successors in the Home Department have also found difficult to resist. He offered the House his own views on the reasons for an increase in criminality. He thought perhaps,

‘that the mechanical improvements which so much distinguished the country, and were a great source of its prosperity, so aided the perpetrators of crime, by enabling them to travel a great distance in a few hours, and to use great caution in the selection of time and manner, that the means of detection were very much lessened.’

This is a factor all earlier commentators, including Peel himself as chairman of the 1822 Select Committee, had apparently overlooked. Wisely perhaps, Peel did not
explore precisely how he thought ‘mechanical improvements’ might cause a disproportional increase in committals to prison from the London criminal courts. Had he done so he might have raised some uncomfortable questions in the minds of his listeners. Such as, what proportion of those committed to prison from the London courts were, in fact, not residents of the capital? It will be remembered that Peel’s earlier use of statistics on levels of crime rested on the assumption that those committed to prison from an area were resident in it. That would clearly not sit comfortably with the view Peel now put forward as to the cause of the disproportionate increase in crime in the capital

The parochial authorities

With the detachment of an historical perspective, Peel’s attempt to use an increase in crime to justify his proposals for a reform of the policing of the capital looks very weak. He was however, in great need both of this foray into criminal statistics and his highly selective interpretation of them. Without a crime wave in the capital he could not have laid much of the blame for it on ‘the very unsatisfactory state of that branch of our police which was chiefly controlled by the parochial authorities.’ Despite there being in reality no reliable evidence, statistical or otherwise, either for the existence of an increase in crime or, for that matter, the conclusion he was now about to draw, Peel announced himself satisfied that, ‘so long as the present night watch system was persisted in, there would be no efficient police prevention of crime, nor any satisfactory protection for property or the person.”

It is difficult, even now, to see quite how he managed to reconcile those comments with the apparent fall in committals between 1827 and 1828, which had obviously occurred under the system he was criticising. Or how he dealt in his own mind with the remarkable success achieved by the Lancashire parochial authorities using the traditional methods.

A plea for co-ordination

There is some evidence that he was, in fact, not entirely comfortable with his own argument. In a style that the modern reader might recognise, Peel tried to neutralise, in advance, any attack on his crime statistics or mention of examples of success by the existing watch system. He did so by a politician’s ruse. He asked a leading question in order to get his retaliation in first and so steer the debate in

18 ibid page 872
Foundations

the direction he wanted. To forestall any mention of examples of falling crime or the achievements of the Lancashire parochial authorities he said,

‘What advantage from a general point of view could be derived from one well regulated district, surrounded by five or six neighbouring parishes in which no attempts had been made to remedy the present inefficient watch-houses system?’

To which contrived conundrum he provided his own answer:

‘Would not the necessary effect be to drive the thieves and robbers from the protected parish into those parishes on its skirts on which the authorities were indifferent about providing efficient security for the property &c., contained in it?’

But his ruse will not bear critical examination. Peel’s is an argument many modern police officers, criminologists and other social commentators will recognise. It is a standard criticism of crime prevention schemes called ‘the displacement effect’. Modern detractors of crime prevention initiatives commonly argue that the only consequence of suppressing crime of one type or in one area is to cause an increase in other crimes or elsewhere. While this may be a widely held view, the exact processes of the effect, and even its existence, are still subject of dispute today. In Peel’s time, and from the crime figures on which he depended, the displacement effect he predicted could neither be detected nor measured in any satisfactory way.

By now however, Peel’s speech was moving on from the task of generating fear of crime among MPs and toward his true objective - the need for uniformity and integration in policing. His ‘displacement’ argument was essential to that objective despite there being no solid evidence in his speech to support it.

Where Peel was leading honourable Members was toward the,

‘conclusion which every one who had inquired into our present watch house system must arrive at... The chief requisite of an efficient police were unity and responsibility of its agents - both of which where not only not ensured by the present parochial watch-house system, but were actually prevented by it.’

19 ibid pages 872-873
20 ibid page 872
Foundations 38

In the absence of any facts or argument to justify this proposal, he resorted once more to the device of a leading question. ‘Could there, then, be any unity of design under such a system?’ His answer was, ‘Certainly not; nor responsibility until all the parochial police was concentrated under one responsible and efficient head.’

The Watch House system

At this point in his speech it becomes clear that Peel’s real target is not crime itself but rather London’s version of the ‘watch and ward’ system established in the reign of Edward I by the Statute of Winchester of 1285. That Act required that, in all ‘great towns being walled’ the inhabitants ‘shall watch the town continually all night.’

Later Acts of Elizabeth I, and George’s II and III, amended and added further provisions to the statute to enable householders in urban areas to avoid ‘watch and ward’ duty by paying a rate into a fund to provide substitutes. This was the system whose image was (and largely still is) of drunkards, sluggards and other inadequate characters forming a wholly ineffective parish watch system in every city in nineteenth century England, including the capital itself. However, there were many at the time (and some since, e.g. Emsley, C. (1991)) who took a contrary view of the effectiveness of the ‘watch’, which is perhaps why Peel produced no evidence to support the dismissive assertions he made about it in his speech.

But the main difficulty Peel had in launching his attack on the capital’s watch system is that none of the Committees he mentioned, including the 1822 Committee whose chair he had occupied, had proposed either to do away with the existing parochial watch, or to ‘unify’ policing. Only his latest 1828 Committee had done so. As subsequent commentators have noted, ‘Except for the select committee of 1828 ... none of the other committees called for any drastic change in the parish system.’ Peel was therefore in grave danger of misleading the House by suggesting that all previous committees ‘must’ also have reached the conclusion that policing in the capital be united. They had clearly done no such thing, as Peel himself well knew.

---

21 ibid
22 Feiling, Sir K. (1950) page 180
23 Smith, P.T. (1985) page 21
In particular, the 1822 immediate predecessor of the 1828 Committee had, under Peel's chairmanship, also 'inquired into the State of Police of the Metropolis' and had then expressed strong reservations about any radical alteration to the existing parish-based system. After noting the admitted flaws of the existing arrangements the Committee had said that:

'If a new system of police were to be constructed ab initio for the regulation of a great city, such defects would no doubt be remedied; but Your Committee have the satisfaction of thinking that, constituted as the present system is, the obstruction to public justice and to the maintenance of the peace exists practically in a much less degree than might have been apprehended, and certainly not to that degree which would warrant them in recommending any fundamental change in it.'

Mr. Chairman Peel and his 1822 Committee nevertheless recommended that the various uniformed patrols employed by the magistrates' offices of the capital and those maintained by the parochial authorities be better integrated and co-ordinated. To that end they proposed that the existing day patrols and nightly watch of the metropolis be brought 'under the same superintendence'.

But the 1822 Committee was also careful to say that, 'each [magistrates] office should undertake the duty of patrolling its own district', only then adding that,

'Your Committee are of opinion, however, in order that the several offices of police may have full information on what passes with their respective districts, that there ought to be a full and unreserved communication between the Magistrates and the officers under whose superintendence the patrol is placed.'

This is a structure of general oversight and good communication between the various policing units in the capital that would certainly help to improve the preventive impact of their existing system of patrols. It is a proposal however, that falls far short of Peel's proposal for a 'unity' of policing.

In addition, the 1822 Committee significantly reinforced their cautious approach to reform later in their Report. In relation to the other main element of the policing arrangements for London, i.e. the magistrates offices modelled on the innovations introduced by the Fieldings at Bow Street and the officers they

---

24 Report of the Parliamentary Select Committee on the Policing of the Metropolis (1822) Parliamentary Papers (440) IV. 91 (1822); Public Records Office HO 611
25 ibid. page 9
26 ibid. page 10
appointed and directly employed in patrolling and in the investigation and
detection of reported crime, the Committee said that,

‘After a full enquiry into and consideration to the state of the several
police offices (in the metropolis), Your Committee are not disposed to
submit any important changes in their establishments.’27

Any remaining doubts about the conservative approach of the 1822 Select
Committee must disappear in the face of the careful caveat it added to its final
recommendations. In an important paragraph that well expresses widely felt
reservations about the reforms Peel was subsequently to propose in his Metropolis
Police Improvement Bill of 1829, the 1822 Committee said that,

‘It is difficult to reconcile an effective system of police with that perfect
freedom of action and exemption from interference which are the great
privileges and blessing of society in this country and your committee feel
that the forfeiture or curtailment of such advantages would be too great a
sacrifice for improvements in police, or facilities in detection of crime,
however desirable in themselves if abstractly considered.’28

**Peel and the London magistrates**

Even Peel’s one sure supporter in his call for unity in policing, the 1828
Committee that he had appointed, was less than totally committed to the idea of a
single professional police force for London. On that issue it was not too far from
the position adopted by the 1822 Committee. It recommended the establishment
of a single head office for the police but it framed its proposals to tread very
carefully around the powers and responsibilities of the magistrates of the
metropolis, thus;

‘Your Committee is fully aware of the difficulty of interfering with the
discretion of Magistrates in the performance of any duties of a strictly
judicial nature....

...But the Police Magistrate, in a great city, may be considered as an
executive as well as a judicial officer, and one of the chief advantages of
the establishment of a head Office of Police would consist, in the opinion
of Your Committee, in its possessing a general superintending authority
in matters of Police, which should remedy the inconvenience that at

27 ibid.
28 ibid. page 11
present results for the independent and unconnected action of the several Police Offices.\textsuperscript{30}

Most significantly, the 1828 Committee decided that they should therefore ‘Abstain from entering into a consideration of the detailed Regulations which should be formed for the constitution and management of the new Police Department.’\textsuperscript{29}

It is clear then, that even the 1828 Committee did not see its proposals as sweeping away, or even unifying, the existing policing arrangements of the capital. Like all its predecessors including that led by Peel himself, it was careful not to trespass on the responsibilities of the magistrates and the officers they employed to assist them in carrying out their judicial duties. The Committee identified the patrolling element in the policing of the metropolis, and in particular, the parochial night-time ‘watch and ward’ as its principal target for reform. Of all the Select Committees that had considered the issue that of 1828 alone recommended that these elements be brought under a single head, but then only in a ‘superintending’ capacity.

To do full justice to Peel, a forensic reading of his speech to the House shows that he did not quite say that all earlier committees on the policing of the capital had concluded that ‘unity and responsibility of its agents’ was the prerequisite of an efficient police for the metropolis. He very carefully referred only to the day and night time patrols existing in the capital, and even then said that that was the conclusion which those committees ‘must arrive at’ not that they had actually done so.

Adding together the doubts about the validity and consistency of Peel’s description of a crime wave in the capital; his unsupported assertions of the inefficiency of the existing watch arrangements; and his misrepresentation of the conclusions reached by the Select Committees that had examined the problems of policing the metropolis, the real background to Peel’s Metropolis Police Improvement Bill can perhaps be glimpsed. The truth seems to be that the necessity for unity and responsibility in policing in the capital was not a conclusion to be drawn from the growth of crime, nor had it been reached by the many committees appointed by the House. It is much more likely to have been a

\textsuperscript{29} Report of the Parliamentary Select Committee on the Policing of the Metropolis (1828), op. cit. page 31
\textsuperscript{30} ibid.
decision Peel himself made, perhaps with the active encouragement of his advisers and Home Office officials.

**Peace Preservation Police**

It is highly likely that Peel's experience during his earlier period in government as Chief Secretary to Ireland influenced his thinking on the policing of the metropolis. He entered Parliament in 1809 and, after a short spell as Under Secretary for War went to Ireland as Chief Secretary in 1812, where he spent six years. In June 1814 he introduced into the House of Commons a 'Bill to provide for the better execution of the laws in Ireland' that proposed,

> 'to create salaried [Dublin] Castle controlled police forces as needed in disturbed districts in Ireland...[for which]...All costs were to be paid by ratepayers in the disturbed areas.'

These new bodies became known as the Peace Preservation Police. They were put under the control and direction of the magistrates in troubled areas to assist them to restore order and then to keep the peace. Peel's experience in Ireland must surely have come to his aid in dealing with the troublesome disorder of the metropolis. It is almost certainly true that,

> 'the actual organisation of the Metropolitan Police probably owes as much to Peel's experience in Ireland and to the Peace Preservation Forces there ... as to anything else.'

**Peel as Reformer**

On the available evidence it is reasonable to conclude that Peel always meant his Metropolis Police Improvement Bill to apply a unified professional body of paid constables along the model of the Peace Preservation Police to the safety and good order of London. His speech to the House in support of his Bill reveals that he meant to substitute them for the disorganised and disreputable rabble of locally appointed watch and ward. The importance of this explanation for Peel's approach to the reform of policing is that it shows his proposals were not the revolutionary approach subsequently widely attributed to him. He did not intend radically to alter the system of crime prevention, detection and prosecution in the capital, but merely to reform one failed part of it - the parochial watch and ward.

---

32 Smith, P.T. (1985) *page 24*
This is most immediately apparent from his concern not to interfere with or disturb the prerogative of the London magistrates to inquire into reports of crimes and to employ their own officers to pursue and apprehend criminal offenders. Those functions were to remain the preserve of the magistrates and their officers. Indeed, if there can be any doubt about Peel’s intentions in this respect in 1829, 10 Geo. 4 cap. 45 must dispel them. That Act emanated from his Home Department and passed into law on the same day (19th June 1829) as his Metropolitan Police Act. Its purpose was to continue unchanged for yet another three years the Police Offices Act which was the successor to the original 1792 Middlesex Justices Act. Parliamentarians thereby preserved and continued all the rights, status and privileges of the magistrates of the police offices of the metropolis, and the patrolling and plain clothes detective officers they employed, at the very moment they introduced the New Police.

Peel’s address in support of his Metropolis Police Improvement Bill is not a call for a revolution in policing. Nor is it an attempt to launch a campaign against crime and criminality despite his reliance on criminal statistics in the early part of his argument. Rather it is a politician’s speech, resonant with demands that someone or something other than the confusion of parish authorities should take responsibility for the burden of protecting property and persons in the capital from harm, and for preventing outbreaks of crime and disorder.

‘One Head Presiding’

Peel exposes his true unifying and centralising intent later in his speech. In an unguarded moment, when speaking extemporaneously in response to a question from a Mr. Bernal, Peel ignored the reservations even of his own 1828 Committee and admitted that to,

‘effect the objects in view .... It was .... absolutely necessary that there should be but one head presiding over and directing the operations of this new police.”

By his ‘principle of unity and responsibility’ Peel went far beyond his view when chairman of the 1822 Select Committee. He did not mean to stop at a co-ordinating administrative layer over the existing watch and ward arrangements of the parochial authorities. His purpose was to replace the whole system with a unified body of police patrols for the capital. In future, those in charge of the New Police would have the duty to prevent crime and disorder, and protect

93 Parliamentary Reports, op cit. page 883
citizens and their property in the metropolis, rather than those responsibilities being lost in a bewildering confusion of local parish jurisdictions.

Peel went on to brush aside the few comments and questions asked by Members, some of them marvellously ill-judged and misinformed, to win the vote to give his Metropolis Police Improvement Bill a first reading. He then handed the project over to the 1828 Police Committee, now reformed as a Committee of the whole House, to deal with the ‘many details’ of his proposal. He subsequently spoke occasionally and briefly on the subject, chiefly in answer to questions, but never at any length or depth, either in the House or elsewhere. Indeed,

‘Peel had little to do with the police after 1829. The Commissioners were the ones who shaped the Metropolitan Police.’

35 Smith, P.T. (1985) page 36
First Commissioners

Both Peel’s speech in support of his Metropolis Police Improvement Bill and contemporary comment show that the full-time professional Metropolitan Police Force was to replace the parochial watch and ward system of the capital rather than the whole of its policing arrangements. Peel argued that the watchmen system had failed to protect Londoners from crime and disorder on their streets and in their homes. When the Bill reached the House of Lords on June 5th, their Lordships had no doubt about the Government’s limited intentions. Lord Holland said, in reply to the Prime Minister’s speech,

‘when their Lordships consider that the bill was intended for the protection of the property, the preservation of the peace and the general security of the metropolis, no-one could doubt the propriety of it’s introduction’

The Police Offices under the boards of magistrates of the metropolis, with their crime investigation and detection responsibilities, remained untouched as did the two types of officers they employed, the plain-clothes detective ‘Runners’, and the uniformed ‘Patroles’. The magistrates retained all their criminal investigative, detective and prosecution powers and duties under the provisions of the Police Office founding Act of 1792 and its successors. For the time being at least therefore, the Bow Street Foot and Horse patrols, with their distinctive red waistcoats, appeared on the streets of London alongside the uniformed preventive constables of the New Police. Significantly, the appearance of the New Police also did not in any way affect the position of the small group of plain clothes ‘Runners’, nor their employment by the magistrates to investigate reports and allegations of crime in order to identify and detect the offender(s). These remained the only officially recognised body of full-time detectives available in the capital.

Peel’s neglect

Peel took little direct interest in his creation after the passage of the Metropolitan Police Act. He left the administrative details to others, and particularly to the two men selected jointly to head the new organisation, Charles Rowan and Richard

---

1 Parliamentary Debates (Hansard) New Series vol. XXI col. 1752
2 Stead, P.J. (1977) page 78
Mayne, who became justices of the peace for the metropolis and joint 'Commissioners' of the new 'Metropolitan Police Force'.

Peel’s name appears on the list of members of a Select Committee on the policing of the metropolis, and in the list of those enquiring into ‘the Petition of Frederick Young and others’ in 1833, concerning the activities of Constable Popay of the Force. Almost a decade later he served as a member of a Select Committee on the Metropolis Police Offices that sat in 1838. That Committee had a powerful influence on the development of British policing. Its impact is dealt with and examined in a later chapter. There is however, nothing in the reports of any of those Committees to indicate that Peel made any major contribution to their deliberations, or that he chaired, or otherwise significantly influenced, any of their meetings or deliberations.

**Political context**

Peel’s 1829 Metropolitan Police Act came as little more than a Parliamentary interlude between Catholic emancipation and the nagging question of electoral reform. It was a turbulent time in British politics with much to occupy the government of the day. Agitation for reform at home fed on constitutional upheaval abroad. The French drove Charles X into exile in August 1830, and the Belgians began their revolt to gain separation from Holland the same month. At home agricultural labourers and the dispossessed combined in revolt that spread from Kent to the North and west as the year progressed. In the midst of all these troubles George IV died, precipitating an election that gravely weakened Wellington’s government.

The Iron Duke was narrowly returned as Prime Minister in the new Parliament. He then flatly refused to countenance any Parliamentary or electoral reform despite the House of Commons and the country being combined against him. His opponents in the new House thereupon forced him from office and put Lord Grey in his place in November 1830. Melbourne came to the Home Office in the new administration, removing Peel from any further direct responsibility for the New Police. He had had Parliamentary authority over his new creation for just over one year. In neither his subsequent short ministry of 1834/1835, nor in his final occupancy of the Prime Minister’s office between 1841 and 1846, is there any

---

4 Report of the Select Committee on the Petition …etc.' Parliamentary Papers (1833) Vol. XII p.407
indication that Peel sought to make any further significant contribution to the evolution of the emerging professional police service.

Peel and policing

Contemporaries did not regard Peel’s contribution to the establishment of the professional police service as an important part of his illustrious career. The first of his biographies, by William Cooke-Taylor, appeared in 1851, the year after his death. In the ‘Preface’ to that four volume work Cooke-Taylor says that,

“Cash, corn and Catholics” have occupied the attention of the country for more than half a century, and the name of Sir Robert Peel is identified with all the great legislative measures by which the settlement of many of the many important subjects and interests have been effected.

Cooke-Taylor does not mention the Metropolitan Police Act in his summary of Peel’s achievements. Only pages 4 to 10 of Volume II of his more than 2000 page eulogistic treatment of Peel’s great career deal with the establishment of the New Police. Reproductions of extracts from Peel’s speech to the House on 15th April 1829 fill almost the whole of that small space. Cooke-Taylor’s peroration at the end of the biography does not mention the subject of policing at all. He praises Peel for his contributions to Catholic emancipation; for the repeal of the Corn Laws, and for his successes in foreign policy. He ignores completely Peel’s contribution to the foundation of the Metropolitan Police.

None of Peel’s other contemporary biographers make much of his involvement in the appearance of the New Police. His fame as founder of the British police service is a much more recent development. Having got his Metropolitan Police Bill through Parliament Peel, far from being the father of modern policing, seems to have left it to others, and particularly the officials of the Home Office and the first Commissioners, to lay the foundations of the modern police service; including, it would seem, allowing them to set the functions and purposes of the new organisation.

Peel and his Commissioners

Years later, Richard Mayne, the longer lasting of Peel’s joint first Commissioners, wrote a memorandum to the then Home Secretary, Sir George Grey, on the subject

5 W. Cooke-Taylor, W. (1851)
6 ibid Volume I Preface
7 ibid. Volume IV page 648
of the office of Commissioner of Police of the Metropolis. In it he complained that:

‘When the Commissioners Office was established it could not have been foreseen what the duties would become. The Secretary of State [Sir Robert Peel] left it entirely to the Commissioners themselves to arrange for the performance of their own duties.’

Among subsequent commentators Reith’s view is,

‘The most inexcusable of all...[his]...short-sightedness, was Peel’s refusal to regulate and determine the status, and even the duties, of the Commissioners as public servants, in spite of their urgent requests to him to do so.’

Other contemporary sources support this picture. None records any direct involvement by Peel in the important decisions needed in the early days of the New Police. The register of confidential letters sent by the joint Commissioners between 8 April 1830 and December 1833, contain only one entry of a letter directly addressed to Sir Robert Peel. Only 15 others went to the ‘principal secretary’ at the Home Office, Samuel March Phillipps. Those letters invariably deal with ‘incidents’ on which the Home Office wanted reports. Only two letters from Peel appear in Richard Mayne’s personal ‘Register of Letters’. The first is a note dated 5th July 1829 asking Mayne to come to Whitehall Gardens on the occasion of his appointment as one of the first two joint commissioners. The other is a brief congratulatory note on Mayne being nominated for a knighthood in January 1848.

The Public Record Office has a document that may perhaps throw some further faint light on these issues. Its date and provenance are unclear. The note seems to be a private record made by Mayne of ‘consultations with Sir R Peel’. He begins by listing the following subjects as having been discussed:

‘numbers, ranks, pay, dress, equipment, duties, whether to be confined to nights, class from which men to be selected, portion of town to be first taken charge of.

8 Memorandum on the office of Commissioner of Police. 26th November 1849 Public Record Office: Metpol/2/34
9 Reith, C, (1943) page 39
10 Public Record Office MEPO 1/44
11 Metropolitan Police Museum Cat. no. 1996-684
12 Public Record Office MEPO 2/32
Mayne then goes on to note the 'Difficulties' facing the new service:

'public jealousy, parochial opposition, various interests patronage taken away, unfriendly feeling at police officers, some of the magistrates openly opposing, unfitness of many of the men, inexperience of all, correspondence very laborious....';

and in a side note at this point,

'Police not seen in boxes as watchmen nor crying the hour, supposed absent, want of confidence in, much complaint about.'

It would seem that the note is not a record of initial 'consultations' about the New Police because Mayne later notes 'Proofs of success' which he lists as,

'Public opinion shown by newspapers unfriendly at first now changed
Very many letters and testimonials
Presentments of grand juries
Testimony of judges, chairmen of sessions
Applications from place to be taken under protection
New patrolling [?] of City Police and further alteration proposed
Criminal Registers
Witnesses from all parts to speak as to former and present state of the town
Prostitutes and drunken persons
Applications for officers from many parts of the country'

It is revealing to the modern eye that this meeting between the Home Secretary and his Commissioners of Police of the Metropolis does not seem to have dealt with the state of crime in the capital. The Secretary of State offers no comments, exhortations or advice on that issue. For his part Richard Mayne makes no claim that Metropolitan Police patrols have had any impact on the incidence of crime or disorder. Nor does he draw attention to any example of success by the Force in the detection or pursuit of criminals.

It is not possible to determine how frequently Peel met the Commissioners or the extent to which he discussed with them the problems they faced. The public
record of the correspondence between Peel and his Commissioners includes no
directions or instructions on the purposes or strategies of the new police
organisation. It is reasonable to suppose that, in the atmosphere of the time, such
important and sensitive issues would have been recorded somewhere and in some
form had they been discussed. The conjecture is therefore, that Peel gave no such
formal advice or guidance to his Commissioners.

At the same time lack of any surviving record of discussions between the first
Commissioners and Peel on these issues is not proof that such exchanges did not
take place. Nor does it give grounds for criticism of the conduct of Peel or his
successors as Home Secretary. The Select Committee 'appointed to inquire into
the Conduct of the Metropolitan Police on 13th May last, in dispersing a Public
Meeting in Cold Bath Fields', an event which resulted in the death of constable
Culley, asked Rowan and Mayne;

'All the instructions you are in the habit of receiving from the Secretary of
State are verbal, are they not? - (Answer) We have never received any
written order, I think."

Rowan and Mayne are not quite correct in their answer to this question.
Parliamentary Papers for 1830 include a copy of a written Instruction issued by
Peel to the Commissioners on 10th December 1829 dealing with appointments to,
and within, the New Police.14

Rowan and Mayne did, however, accurately report the custom of the day in their
answer to the Select Committee. Peel and his successors as Secretary of State for
Home Affairs followed established ministerial practice in failing to record any
instructions and directions that might have been given to the Commissioners. It
was always for those attending on ministers to make their own note of what took
place. Mayne clarified this point in his evidence to the Cold Bath Fields Select
Committee, when he said that it was the Commissioners who had the habit of
making a memorandum on their return to their office in Whitehall Place.15 That
practice probably explains the private note preserved in the Public Record Office
referred to earlier. Rowan and Mayne did not normally expect, nor apparently did
they ever remember receiving, written instructions from the Secretary of State.
The consequence is that, even if they were given, instructions or directions on the

---

13 Report of the Select Committee on the Conduct of the Metropolitan Police etc. (1833), Parliamentary Papers Vol. XIII p.603 (at 108)
14 Parliamentary Papers (1830) (505) XXIII.405
15 Report of the Select Committee etc., op cit. page.603 (at 109)
proper purposes and functions of the New Police would not necessarily be preserved in the public record.

The magistrates and the New Police

While there is a distinct lack of any record of official guidance to Mayne and Rowan, a tide of comment and criticism from both public and press swept over them. Tempers and debate ran hot in what was essentially a political dispute about the form of British civil society in the post-Napoleonic era. Opposition to the New Police force was not confined to Peel’s political opponents. Significant parts of the British establishment were disturbed by the development. In addition, the Metropolitan Police Force took to the streets with an old-established and powerfully supported policing organisation still firmly in place in the capital, and one that did not look kindly on Peel’s newcomers. The police offices established under the successors to the 1792 Act scattered around London under the direction of local boards of magistrates, had many powerful supporters.

Those alarmed by Peel’s innovations had the benefit of having that active and long-established system of policing to contrast with the Peelers. They took full advantage. By long engagement in both investigative and patrol policing the police offices had accumulated unrivalled experience in dealing with the problems of crime and criminals in London. And they continued, by statute, to play a key role in that important aspect of the policing of the capital. Section 42 of the 1829 Metropolitan Police Act had specifically provided that ‘nothing in this Act contained shall affect or alter’ the legislation supporting the existing police offices. Parliament thus deliberately and specifically protected and insulated all their rights, status, powers and privileges from any interference by the New Police.

For their part Bow Street and the other police offices were naturally suspicious of the ‘Peelers’. They saw them as rivals for the attention and support of the capital’s citizens, and as a potential threat to their prestigious and lucrative monopoly of the detection and pursuit of criminals. The police office magistrates, and their supporters in Parliament and elsewhere, prompted and published a fund of critical comment on the new organisation. They constantly sought to provoke friction between the Metropolitan Police Force and newspapers, politicians and public, especially in the early days.

Influence of Colquhon

Peel’s opponents among supporters of the Police Offices drew heavily on the writings of Patrick Colquhon, perhaps the best-known, and most influential, of the
London magistrates after the Fieldings themselves. Colquhon's 1796 work, 'Treatise on the Police of the Metropolis', played a significant role in the public debate about policing. He strongly influenced all the parties involved, not excepting Peel and his advisers. More than 30 years before the Metropolitan Police Act, he has a good claim to have first proposed the establishment of a unified police service for the metropolis.16 His 'Treatise' says,

"is it not fair to conclude, that the insecurity which the public experiences with regard to life and property, and the inefficacy of the Police in preventing crimes, are to be attributed principally to the following causes?...

...2. The want of an active principle, calculated to concentrate and connect the whole Police of the Metropolis and nation, and to reduce the general management to system and method by the interposition of a superintending agency, composed of able, intelligent and indefatigable men, acting under the direction of His Majesty's principal secretary of State for the Home Department, on whom would devolve the subordinate care and direction of the general Police of the Metropolis."17

However, in contrast to the 'watch and ward' target of the 1828 Select Committee and the Metropolitan Police Act that was its outcome, Colquhon's reforms aim at the identification, detection and prosecution of criminals active in the capital. His proposed new police establishment was to be based on the police offices, and would create 'a complete history of the connections, and pursuits of all or most of the criminal and fraudulent persons who resort to the Metropolis' and a 'complete register of every known offender and thereby establish a clue for their detection.'18

Colquhon's 'Treatise' is clearly about the detective aspect of the magistrates responsibilities rather than the protective and preventive effect of 'watch and ward' and other forms of uniformed patrolling.

Colquhon's impact on the debate on the policing of the metropolis was nevertheless considerable. The extent of his influence can be seen in the recommendation of Peel's 1822 and 1828 Select Committees that a 'general superintending authority' be set up under the Secretary of State to co-ordinate and integrate the activities of the offices. The idea was not implemented, but it is taken almost word for word from the 'Treatise'.

16 Colquhon, P. (1796)
17 ibid. page 29
18 ibid
Opponents of Peel’s reforms also drew on Colquhon’s ‘Treatise’ to emphasise the local nature of the contribution made to the reduction of crime and disorder in the capital by both the magistrates’ officers and by parish constables and watchmen. They played heavily on the distinction between those locally based arrangements, independent of government control, and the direct accountability of the New Police to a government minister. They sought to exploit public fears that Peel’s New Police, in contrast to the parochial system, sought to impose ‘a despotic system of surmises, low artifice, anonymous charge, and popular perversion which characterised the worst spirit of the worst times of France’ on the British public, along the lines then being created by the oppressive Napoleonic regimes of the continental powers. In Peel’s time and afterward press and public alike were thus led to link support for the old system of policing with opposition to Continental style despotism, both being described as a patriotic duty.

**Constable Culley**

A widespread public sense of a despotic tendency or potentiality in the appearance of the New Police, fuelled by the supporters of the old police offices, is probably sufficient to explain the most infamous episode in the opposition to Peel’s reforms. During the dispersal of the Cold Bath Fields meeting of the National Union of the Working Classes on 13th May 1833, a section of the mob attacked and stabbed three of the large number of Metropolitan Police constables employed on the event. Constable Culley of the Metropolitan Police Force died from his wounds in Calthorpe Street. The more violent quarters of British society greeted the crime as a blow struck for freedom against the tyranny of ‘Peel’s Police, Raw Lobsters, Blue Devils, Or by whatever other appropriate Name they may be known’. A jury of Londoners subsequently acquitted those accused of the murder.

Opponents of the New Police existed at every level of society, not simply among the rougher elements of the mob. Nor did the opposition gain its strength solely from the misplaced patriotism of the magistrates and others whose position or patronage Peel’s reforms threatened. There was also a body of informed opinion that continued to voice a thoughtful and deeply felt concern about the creation of;

‘a Force unknown to the British Constitution, and called into existence by a Parliament illegally constituted, legislating for their individual interests, consequently in opposition to the Public good’

---

19 Metropolitan Police Museum – *Poster c.1830*
20 ibid.
The Press

A month after the establishment of the Metropolitan Police Force, the ‘Morning Journal’ printed an article on the New Police under the heading of ‘The Gendarmerie’. It repays reproduction at length. It not only recalls the old Saxon traditions of local peace-keeping, but well expresses the very real reservations about Peel’s reforms felt by many otherwise well-disposed citizens.

‘It is a characteristic of the British constitution, and it is the salt that has preserved that constitution, that the whole interior government of the people shall be left to the people themselves....Our forefathers would have seen with extraordinary jealousy the erection of a power in our streets, which neither conferring with the magistracy, nor guided by the feelings belonging to civil life, would account for its proceedings to none but a member of the executive, who might, in process of time, be a tyrant, or a tool in the hands of a tyrant, and would take its immediate stamp not from a man of civil knowledge or civil habits, but a soldier.’

Having made the political point, the ‘Morning Journal’ then touched on an issue of the most profound importance to its readers, and one that strikes a chord even in these much changed times.

‘It is mere ignorance or mere chicanery to say that a change of city watch is of no great importance. The liberty of the subject does not consist in the great machinery of empire, but in the little provisions for personal security. The foundation of all English freedom is in the single law which prescribes that no man shall be kept under charge untried, but that his case shall be decided by a jury. The whole comfort of English life depends upon that other simple provision, that a man’s house is his castle. Those things may make no great figure beside the pompous codes of other nations, but they are the essence of English liberty; for while life, limb and property are safe under the shield of the law, man may defy despotism.’

On the same day the ‘Morning Herald’ said in its leader:

‘We certainly object to the new police in principle, as we objected to the old system in detail. The latter was good in its principle, for it was in strict accordance with the English Constitution, but it was bad in practice. We are

21 ibid. Press Cuttings - 1829 page 5.
of opinion...that the principle ought to have been left untouched and the practice reformed.’ 22

The London ‘Times’ took a different view, describing the New Police as ‘an important and valuable improvement upon the former system of ‘ancient, reverend’ and most inefficient watchmen.” 23 But even that stalwart defender of Peel’s reforms based its support not on the demonstrable successes of the new system but on the perceived defects of the old.

**Importance of Patrol**

All sides of the argument about the improvement of the police of the metropolis agreed on one point. There was an urgent need for a system of regular visible uniformed police patrolling for the protection of citizens and the deterrence of crime. Even the most fervent supporters of the parochial watch and police offices system did not deny that effective preventive patrolling was an essential element in the policing of the metropolis. The Bow Street magistrates themselves employed both Foot and Horse Patroles for that purpose in and around the capital. The magistrates clearly appreciated the importance of the visible or imminent presence of officers of the law as a deterrent to crime and a reassurance to the public. Their patrols were, like their plain clothes colleagues among the magistrates’ officers, empowered to investigate crime and pursue criminals but had an entirely preventive remit.

The 1821 version of the ‘Rules and Regulations of the Foot Patrol Belonging to the Public Office at Bow Street’ said that;

‘the Primary object of the Establishment is by prompt, regular and vigilant performance of the Patrole Duty to prevent as much as possible the commission of crimes, particularly street robberies and burglaries.’ 24

As to the horse patrols, the magistrates directed that:

‘The Duty of the Horse Patrole stationed on the roads is for the protection of persons travelling on the high roads.’ 25

Under Peel’s chairmanship, the 1822 Parliamentary Select Committee on the Policing of the Metropolis recognised the value of, and strongly supported, the

---

22 ibid. *page 7*
23 ibid. *1830 page 32*
24 Public Record Office *HO 61/1 item 1*
25 Orders and Directions to be Observed by Horse Patrols (1822) Public Record Office *HO 61/1 item 2*.
patrolling activities of the magistrates uniformed officers. Its Report to Parliament says that;

‘Your committee consider that the chief recommendation of a patrol consists of its tendency to harass and banish the offender, by preserving an annoying scrutiny, and thus prevent the commission of crime.’

That wholly preventive precedent for policing and its wide public support did not go unnoticed by the founders of the New Police.

First Instructions to the New Police

In the atmosphere of violent controversy that existed at the time, any public comment by Charles Rowan and Richard Mayne, the joint first Commissioners of the Metropolitan Police, on the issue of the duties and functions of the new organisation needed very careful handling. Supporters of the existing police offices could be expected to give the closest critical scrutiny to every action or statement on the issue. Accusations of political chicanery, or even subversion of the constitution, were likely to fly from all sides and on the lightest excuse.

In the circumstances Rowan and Mayne adopted the only safe course. Working with the grain of public opinion they decided to emphasise and reinforce the clear intentions of Parliament for the new organisation; that it should be no more than an efficient replacement for the ‘very unsatisfactory’ and ineffectual patrol service formerly provided by the capital’s parochial watch and ward. The wording of the 1829 Metropolitan Police Act was wholly preventive. It said that;

‘a sufficient number of fit and able men shall from time to time, by the direction of one of His Majesty’s Principal Secretaries of State, be appointed as a Police force for the whole of ...[the Metropolitan Police District]...who shall be sworn in by one of the...[Commissioners]...to act as constables, for preserving the peace and preventing robberies and other felonies, and apprehending offenders against the peace,’

The genius of the founders of the Metropolitan Police lay in finding a way to blend together the words of the legislators and the precedent of the remit of the Bow Street uniformed Patroles, to formulate a statement of the purpose of the Metropolitan Police Force that set the new organisation securely off in the tradition of the old Saxon constables. Mayne and Rowan drew a skilful line through all the

---

26 Report of the Select Committee on the Policing of the Metropolis (1822) page 99; Parliamentary Papers (1822) (440) Vol. IV
27 10 Geo IV cap XLIV Section IV
disquiet surrounding their new organisation when in 1829, with the 'approbation of
the Secretary of State for the Home Department', they adopted a strictly preventive
view of the purposes of a professional police establishment. Their first
Instructions say that:

'It should be understood, at the outset, that the principal object to be attained
is "the Prevention of Crime"

To this great end every effort of Police is to be directed. The security of
person and property, the preservation of public tranquillity and all the other
objects of a Police establishment, will thus be better effected than by the
detection and punishment of the offender, after he has succeeded in
committing the crime.'

For the avoidance of any error the duties of each individual Constable of the Force
are set out later in the Instructions. Rowan and Mayne tell each man that,

'He will be held responsible for the security of life and property, within his
Beat, and for the preservation of the peace and general good order, during
the time he is on duty.'

Identical versions of that definition of policing appear in the 1836, 1851 and 1862
revisions of those Instructions. It will be noted that nothing in the wording
trespasses on the criminal investigative and detective responsibilities or functions
of the magistrates and their officers.

The magistrates of the police offices and their officers continued to be solely
responsible for 'the detection and punishment of the offender after he has
succeeded in committing the crime', a function that Rowan and Mayne explicitly
exclude from the activities their Force. Nowhere else in their original Instructions
to the Metropolitan Police Force is any mention made of the Force, or any of its
individual constables, having any responsibility for the investigation of reports or
complaints of crime, or for the investigation, detection or prosecution of
unidentified criminal offenders. In all matters of crime the aim of the New Police
is prevention and deterrence, and on the protection of citizens from the harm crime
can do, rather than the identification and pursuit of offenders. It is a distinction

28 Metropolitan Police Instructions Orders etc. (September 1829) pages 1 and 2. Metropolitan Police
Museum.
29 ibid. page 38
30 Metropolitan Police Instructions Orders etc. (1 Feb. 1836) Public Record Office MEPO 8/2, and
(1851), (1862) Metropolitan Police Museum.
Rowan and Mayne well understood but which, as will subsequently appear, they found difficult to maintain or to get others to accept.

Buttressed and protected by the wording of the Metropolitan Police Act as a justification for their view of their duties, Rowan and Mayne focused their Instructions to the Force on the primacy of preventive patrolling. In so doing they lodged themselves and their constables firmly in the long tradition of the English common law as the successors to the citizens and watchmen who discharged the responsibility of every community to keep its own peace and good order. The Commissioners' definition of their role in the criminal justice system emphasises their concern with the protection and support of the citizens of the capital, and makes no mention of their formal connection to government.

Other Instructions

Rowan and Mayne's Instructions on other matters are a mundane mass of detailed bureaucratic directions, advice, and orders, distinguishable from their modern counterparts only by the beauty of the handwriting in which they are recorded. They fill the pages of leather bound tomes, ready for transfer by hand into books on each Division, where Superintendents would read them to all ranks at regular intervals. Directions and instructions on every imaginable subject follow one another in bewildering succession. Reports of quite trivial disciplinary offences preface notices of the dismissal of the constables involved. In the early days, before Mayne found a lawyer's way of avoiding the draconian wording of the disciplinary provisions of the 1829 Act, dismissal was the only penalty for even the most minor infractions.

The Instructions therefore note dismissals for gossiping with servants; for 'quitting his beat for a few minutes on a false pretence'; for failing to wear the regulation armlet on their uniform; for 'using highly improper language to a gentleman', etc. etc. Endlessly, and perhaps more justly, they announce dismissals for improperly entering public houses, consorting with women and being intoxicated on duty."

Nowhere amongst all these instructions and directions however, is any amendment or revision made to the definition of the nature or purpose of the duties performed by these new public servants.

Equally, the Instructions set no objectives for the Force. Rarely is the task of combating crime and disorder mentioned. When it is, almost invariably it is in connection with the receipt of a complaint or a report of an individual crime or a

51 Public Record Office MEPO 7/1.
particular type of offender, to which patrolling constables should pay attention. The Instructions contain no crime statistics. They do not even update those used by Peel in his speech to the House on the Metropolis Police Bill. The Commissioners apparently see no need to demonstrate that their new Force has any impact one way or the other on levels of crime or disorder in the capital. Nor do Rowan and Mayne feel the need to include exhortations or initiatives to urge constables to improve their performance against any of the many other policing problems faced by the Force.

Rowan and Mayne’s orders and instructions are about the structure, organisation and administration of the Force. They demand good housekeeping, good discipline and the prompt and proper completion and filing of records. The Commissioners pay particular attention to the appearance of constables, and the duties of their supervisors in that regard. Famously, an instruction of 16th October 1829 directs that:

‘[The men] are likewise to be once more cautioned that if they are seen lounging about with their hands in their great coat pockets, the pockets will be taken away.’

Responsibilities of the New Police

Rowan and Mayne clearly see their prime responsibility to be the good administration and good discipline of the new Force, and their orders and instructions reflect that view. If there is an underlying strategy for the New Police, a ‘mission statement’ or ‘management vision’ as a modern observer might call it, it is that crime and criminals are to be banished, or at least brought under control, by the mere disciplined presence of the New Police on London’s streets.

This is a picture of the purpose of the new organisation fully and forcefully expressed by the 1822 Parliamentary Committee. It believed that a unified police for the metropolis should be solely concerned to ‘harass and banish the offender ...by preserving an annoying scrutiny’ in order not to come into conflict ‘with that perfect freedom of action and exemption from interference which are the great privileges and blessings of society in this country.’ Rowan and Mayne were clearly concerned to see their new ‘Peelers’ entirely devoted to that laudable end, and to no other.

32 ibid. page 12
5

Select Committees

There is nothing in any of the Orders and Instructions given to the Metropolitan Police Force in its first 40 years to indicate that the first Commissioners felt any need to further discuss, expand upon or otherwise dissect the 'prevention of crime' as a complete statement of purpose for the Force. Rowan and Mayne never altered or amended the statement of purpose set out in the original 1829 book of Instructions that, with the 'approbation of one of His Majesty's Principal Secretaries of State', they issued to each and every member of the New Police.

Their decision not to further explain their first definition of the role and function of the New Police was publicly and politically expedient at the time. It has however, created difficulties for later commentators on the development of British policing. The problem is that the expression 'the prevention of crime' can have a number of radically different meanings. It can also be attached to a wide range of actions; from changes in the curriculum of infant schools, to the publication of learned discourses on moral topics; from charitable work among poor, to the transportation and execution of offenders; and from supporting and defending the rights of the individual, to amending the law to ensure the conviction of reputed criminals.

Direct evidence on what Rowan and Mayne meant by the words is sparse. It is fortunate therefore, that Parliament appointed three Select Committees in the early years of the New Police to 'inquire' into various aspects of its performance and activities. Rowan and Mayne gave evidence to all those Committees. For the most part the questions put to them do not directly address the functions and purposes of the new police organisation or its involvement with crime and criminality. Nevertheless some of the evidence given by the Commissioners to those inquiries is significant. It gives an insight into their thinking on those subjects. Two of the three early Select Committees are of special interest in this respect; the 1833/34 Police of the Metropolis Committee, and the 1833 Popay Committee. The third, the 1833 Cold Bath Fields Committee dealt with the incident in which a mob murdered constable Culley. It looked closely at the conduct of the public order maintenance duties of the Metropolitan Police on this occasion, but its Report contains nothing of direct relevance to issues of crime.

1 Public Record Office MEPO 7/1, 2, etc.
The 'Popay' Select Committee of 1833

The 1833 Select Committee set up to consider 'the Petition of Frederick Young and others' (the Popay Committee) was not the first to be appointed that year, but it was the earliest to complete its work. The petitioners mentioned in its title were leading figures in the National Union of the Working Classes. They complained that sergeant Popay of the Metropolitan Police Force had spied on the meetings of the Union; had joined the Union under a false name and identity; had taken an active part in its meetings; and had encouraged members to advocate revolution and the overturn of the constitution.

In its Report the Committee solemnly conclude that it should 'mark [Popay's] course of behaviour with their most grave and decided censure'. More seriously, it also criticises his supervisors for their, 'lack of caution not always exercised... [in]... warning him against having recourse to undue means' to obtain information about the business of the National Union of the Working Classes.

The significance of the work of the Popay Committee lies in the attention it paid to the policies and practices of the New Police in the employment of its constables in activities other than their basic duty of preventive patrolling in uniform. The final conclusion of its Report resolves that;

'with respect to the occasional employment of Policemen in plain clothes, the system, as laid down by the heads of the Police Department, affords no just matter of complaint, while strictly confined to detect Breaches of the Law, and to prevent Breaches of the Peace, should those ends appear otherwise unattainable; at the same time the Committee would strongly urge the most cautious maintenance of those limits, and solemnly deprecate any approach to the Employment of Spies, in the ordinary acceptance of the Term, as a practice most abhorrent to the feelings of the People, and most alien to the sprit of the Constitution.'

Rowan and Mayne gave evidence to the Committee on three occasions. On their first visit on 10 July 1833 the Committee asked directly about the employment of their officers in plain clothes,

'What is the rule of the service as to the wearing of the uniform? - (Rowan and Mayne) That they shall wear it, except allowed to do otherwise. As to
the use of patrols in plain clothes,...to guard against...robbery;...we have found it better done by persons in plain clothes, who were not thus known to the thieves, both in preventing them and in catching them when they have been going in.'

On the specific case of the employment of Popay in plain clothes, the Committee asked,

'Supposing Popay allowed himself to be thought other than a policeman, and knew he was considered in the light of a drawing-master, and under that assumed character attended these meetings, would he have your sanction? - (Rowan and Mayne) 'Certainly not.'

'Would it not be in direct opposition to the rules you think necessary to lay down for the conduct of the parties?' - (Rowan and Mayne) 'Most decidedly so. We have repeatedly cautioned the superintendents and the men, if we have seen them about doing anything which could be represented that they were acting in the odious sense of the word spies. On all occasions we have most strongly told them they must not do so.'

Finally the Committee took the Commissioners back to the founding of the New Police. The Chairman put to them that,

'I believe the original rules of the police force did not comprehend the employment of men in plain clothes? - (Rowan and Mayne) There was a discussion with the Secretary of State whether they should put on a uniform or not. The question was discussed at great length, and the advantages and disadvantages of the two systems were weighed; it was thought more desirable that they should be in uniform;...but after they had been in uniform some short time, it became clear that some of the police could not perform their duty in uniform so well as they could out of it....some of the magistrates thought would be a dangerous precedent, and that mischief might arise from it; but the Secretary of State authorized the Commissioners to do so. The Commissioners had nothing but the public good in view in doing it, and believe the public have been better protected by it.'

---

5 ibid page 485 at para. 1833  
6 ibid pages 485/486 at paras. 1837 and 1838  
7 ibid page 486 at para. 1841
Use of Spies

The issue of the employment of the New Police in plain clothes was only indirectly of concern to the Popay Committee. It is not the main focus of its inquiry. Its real fear was that the government had used Rowan and Mayne's constables to obtain information about the activities of its political opponents. The possibility of the use of the New Police for such partisan purposes seriously alarmed the Committee. That feeling became clear when Rowan and Mayne appeared before it for a second time, a fortnight later on 23rd July.

In the interim the Committee had questioned Popay about his activities, and obtained copies of his reports to his superiors. This showed that the Commissioners had, in truth, personally seen and approved reports prepared by Popay. Even more damaging was that his reports included material clearly falling outside any duty he had to 'prevent Breaches of the Law, or Breaches of the Peace'. The Chairman put the Committee's fears directly to Rowan and Mayne.

'Had you ever any object in view to gain any information for the Government or to employ spies to pry into people's private lives? - (Colonel Rowan) I will venture to say there are no two gentlemen in the town that would more abhor such an action then the two Commissioners of Police, and they would not obey any such instructions from any Government - (Mr Mayne) I must be allowed to say, that the imputation that we could have sanctioned or allowed any such practice has been painful to us in the highest degree.'

'As gentlemen and men of honour, you would have felt it an insult to be requested to conduct such a system? - (Mr. Mayne) Yes, and I would undoubtedly have quitted the office rather than comply with any such direction.'

These exchanges expose the reality of these concerns for parliamentarians in the early days of the New Police. They also show Rowan and Mayne's obvious anxiety to allay them and to assert their independence from government control. The Commissioners are at pains to assure the Committee that their men did not adopt the guise of 'spies' to 'pry into people's private lives', or represent themselves as being anything other than constables when going about their duties. Both Commissioners assert that, even if government were to direct them to

* ibid. pages 577/578 at para. 3917 to 3918
employ their men on such duties, they would refuse to obey the instruction and resign rather than accept it.

It would seem that Rowan and Mayne dealt successfully with these issues on this occasion. The Committee's Report does not criticise their policies and practices for the occasional employment of constables in plain clothes, and wholly supports their view of this aspect of their duties. However, in its Conclusions the Committee takes the opportunity forcefully to remind both the Commissioners and Parliament that the constables of the New Police should only be out of their uniform in order 'to detect Breaches of the Law, and to prevent Breaches of the Peace', and even then only when 'those ends appear otherwise unattainable'.

The grey area in all this lies in the Commissioners' evidence about their deployment of constables in plain clothes to deal with specific problems such as robbery. Clearly, such plain clothes activity deceives the public about the status and intent of those constables. The Commissioners certainly meant to deceive those members of the public who might be tempted to commit crime. But it is also apparent from the Commissioners' evidence that this type of employment is exceptional and that it was not detective work as was practised by the magistrates officers or as a modern observer might understand the term. Insofar as it was to detect offenders, it was aimed at them 'when they have been going in' rather than after they had committed their crimes. Thus the adoption of plain clothes by the Peelers simply enabled them to catch, prior to or in the act, offenders who would otherwise escape immediate arrest. Their deployment in this guise was also a response to demands for action from the public or their representatives, and was undertaken only where uniform patrolling proved to be ineffective in the prevention of particular crimes.

Rowan and Mayne also made it clear that plain clothes work formed no part of the ordinary duty of their constables. In no sense did their men undertake the detective and investigative duties performed by the officers employed by the magistrates of the metropolis. Nor did their constables use their temporary anonymity to associate with criminals or their compatriots in order to gather information about offenders, as was the practice of the plain clothes Bow Street Runners. The Commissioners left absolutely no room for doubt on these issues. They were adamant that any attempt to impose those duties on their men would be

---

9 ibid page 409 at 3
met by blank refusal, and promised their joint resignation if government insisted upon it.

**Police of the Metropolis Select Committee, 1833/1834**

In April 1833, prior to the Cold Bath Fields incident in which constable Culley of the Metropolitan Police was murdered, and before the start of the work of the Popay Committee, Parliament appointed a Select Committee to 'inquire into the State of the Police of the Metropolis within the Metropolitan District, and the State of Crime therein.' Robert Peel appears in the list of members of this Committee, but he does not seem to have played any major role in it. The terms of reference of this 'Police of the Metropolis' Committee are identical with those of the 1828 Select Committee that had been the precursor of Peel's Metropolitan Police Act. This 1833/34 Select Committee explicitly accepted that its inquiry continued the work of that earlier Committee. It set out to review the operation of the New Police, and to examine its 'management and conduct'. The appointment of the Committee coincided with one of the periodic renewals of the legislation that supported the police offices still operating in the metropolis alongside the New Police. Parliament needed guidance and advice on the renewal of the legislation supporting the offices now that the New Police were up and running strongly.

The work of the Committee spread over two years and two separate sessions of Parliament. Four months into its hearings, on 16th August 1833, the Police of the Metropolis Select Committee decided to suspend its inquiry. The reason given was that since its appointment the Popay and the Cold Bath Fields Select Committees had started work on specific aspects of the activities of the Metropolitan Police Force. In the circumstances the Committee offered no Report, suggesting that it be re-appointed to complete its inquiry in the next Parliamentary session.

**Evidence to the 1833 Police Committee**

Before it adjourned, the 1833/34 Committee called Rowan and Mayne to give evidence on four occasions; on 29th April, 1st May, and on 2nd and 15th July, 1833. Appearances before Select Committees heavily engaged the Commissioners in this period. Their final appearance before the first session of the Police of the Metropolis Select Committee...

---

10 Select Committee on the Police of the Metropolis etc. (1833) Parliamentary Papers (1833) vol. XIII pages 401 et. seq.
11 ibid Report, page 3
12 ibid page 403
Metropolis Committee on 15th July fell between their last two visits to the Popay hearings, and just after the death of constable Culley and the consequent appointment of the Cold Bath Fields Select Committee.

The prevention of crime

In their first two examinations the Police of the Metropolis Committee questioned Rowan and Mayne about their general stewardship of their responsibilities since the foundation of the Metropolitan Police Force in 1829. Nothing of interest on the subjects of crime and criminality arose on those occasions. But when they appeared on 2nd July the Commissioners responded to complaints by the parochial authorities of St. Luke's that the Metropolitan Police did nothing about the burglaries that plagued the parish.

Rowan and Mayne's first response was to argue that the offences were not preventable by any action of their patrolling constables. They then pointed out that there was no evidence that the burglaries were due to negligence by the any of the constables posted to the beats on which they had occurred. When asked to give an example of 'negligence' by a constable in these circumstances, they replied, 'if the property is of great bulk, that is a strong reason for thinking the police to blame...[since]...there must have been negligence in allowing the thief to pass along the beat.'

What might be surprising to the modern observer is that the Committee did not then pursue the matter further. It did not go on to examine what steps Rowan and Mayne, or the constables responsible for the parish of St. Luke's, took to investigate and detect these offences. Their modern counterparts would not have escaped so easily. They would be asked to explain what they had done to identify and catch the burglars, or to recover the stolen property. But the 1833/34 Select Committee did not put those questions to Rowan and Mayne because it recognised that that duty did not rest with them. In 1833 only the magistrates of the police offices of the metropolis and the officers they employed had any responsibility for, or interest in, such matters.

The Select Committee's restricted view of the responsibilities of Rowan and Mayne's officers is explicit elsewhere in its Report. At a later stage in their evidence on this occasion the Commissioners dealt with complaints from the magistrates of the metropolis that officers of the Metropolitan Police had exceeded their duty by questioning witnesses and inquiring into charges brought

---

13 Parliamentary Papers (1834) vol. XVI, page 317 at para.4128
to their Station Houses. The magistrates alleged that the Metropolitan Police regularly usurped their responsibilities by discharging people from their custody as a result of such 'inquiries' into criminal offences. They complained that, in law, the officers in charge of station houses should instead bring all such accused persons before the courts for examination.

Rowan and Mayne were at great pains to explain that no such 'inquiries' into the offence took place. They said that officers in charge of station houses simply took steps to discover whether the offence alleged was a felony. That was necessary to justify the detention of the suspect. No inquiry into the strength of the evidence, or the truth or otherwise of the accusation took place. This exchange demonstrates how keen Rowan and Mayne were to reassure the Committee that they both clearly understood and energetically maintained the distinction between their legal status and responsibilities and those of the magistrates of the metropolis.

The detection of offenders

Rowan and Mayne appeared before the Committee on 15th July 1833 for the last time before its adjournment to the following year. The Committee questioned them about the conduct of a certain Inspector Bullock who had obtained a warrant to search a house in Lambeth in connection with a 'coining' case being investigated by the Royal Mint. Mayne took the opportunity to set out the Commissioners' views on the involvement of their constables in the detection of crime. He explained that in this particular case and under the directions of the Mint some of their men had donned plain clothes to keep surreptitious observation on the house, later entering it to purchase false coins without revealing their identity. Mayne informed the Committee that he had subsequently written on the papers in the case that,

'Mr. Thomas (the Divisional Superintendent in charge of the officers) has been acquainted, that I never approved of the employment of his men in the manner here stated; in future, no steps shall be taken without the immediate sanction of the Commissioners.'

The Committee Chairman then asked the Commissioners,

14 ibid page 325 at para 4181
15 ibid page 326 at para. 4183
16 ibid pages 331-333 at paras. 4200 et seq
17 ibid page 333 at para 4205
'Now will you state what was your objection to that course? - (Rowan and Mayne) Our objection was, that it was entrapping the party into committing an offence; we did not choose to employ police to induce the parties to commit the offence in order to obtain a conviction against them. We have in every case proceeded on the principle (where it was in our power) to prevent the offence, and not to induce the parties to commit the very act for which they were afterwards convicted.'

The Committee went on to refer to the officers employed by the magistrates and asked;

'Do you apprehend a different system was pursued by the Bow-street officers and patrols previous to the establishment of the Metropolitan Police? - (Mr Mayne) I have heard so; and it has been reported to me that Mr. Powell comparing the Metropolitan Police with the former Bow-street officers complained of the Metropolitan police spoiling cases, by not acting upon the same principle as the former police officers had done.'

Later on this occasion Rowan and Mayne further clarified the distinction between the duties and responsibilities of the officers employed by the magistrates and the constables of the Metropolitan Police. When discussing the possibility that the 'whole executive police [of the metropolis] were placed under the control of the Commissioners', Mayne was asked, 'do you see [in those circumstances] any objection in appropriating a certain number of men to attend constantly at each office, and there to be under the complete control of the magistrates?' Mayne said 'No,' an answer which he subsequently amplified by agreeing that, when so employed, such constables would be 'considered as in the confidential employ of the Police Magistrates.' Indeed he then removed any doubt about the sharp difference between the duties of his constables and the activities of the officers employed by the magistrates by reminding the Committee that what it proposed was already common practice, and that

'at present, when one of the Metropolitan Police is employed in any particular case by the magistrates, we do not require him to report what is done under the direction of the magistrates.'

---

18 ibid at para 4207
19 ibid at para 4209
20 ibid at para 4285
21 ibid at para 4287
22 ibid at para 4289
Instructions from Home Secretary

At their final appearance before the 1833/34 Police of the Metropolis Select Committee on 26th June 1834 Rowan and Mayne were given an opportunity to respond to the evidence presented by other witnesses. In advance of their attendance they received copies of what others had said to the Committee. One such witness was the Chief Magistrate at Bow Street, Sir Frederick Roe. In dealing with a complaint he had made against them Rowan and Mayne repeated and confirmed the evidence they gave to the Popay Committee about their relationship with the Home Secretary. The Committee asked,

‘6177. In reference to orders which you receive from the Secretary of State’s office, at any time, are they in writing, or are they verbally given? - (Rowan and Mayne) I do not remember that we have ever had any orders as to our conduct, or the general management of the Police, in writing.

Any orders which involves expense is always given in writing? - (Rowan and Mayne) Yes, if not in the ordinary line of Police duty.

But orders with reference to the management of conduct of the Police in general are not given in writing? - (Rowan and Mayne) Not in general; I do not remember any instance where it was done.’

Almost immediately after these exchanges the Committee invited Rowan and Mayne to set out any alteration in the law they wished to propose. The Commissioners asked for the unification of the policing patrols of the metropolis. They suggested that the Bow Street horse patrols be incorporated into their Force; that the City of London constables and the Thames River police be brought under their control; and that the officers attached to the police offices of the metropolis acting under the control and direction of the magistrates be ‘replaced’ by their constables. At the same time they made it clear that they did not seek any additional powers for their own constables beyond those they already possessed. They also said that ‘common informers ... might be beneficially superseded’ in their district, and that the right to lay informations before the courts under penal statutes be confined to ‘constables ... or to the party actually aggrieved by the offence committed’.

23 ibid page 384 at paras. 6177 to 6179
24 ibid page 385 at para. 6183
Common Informers

In this last matter Rowan and Mayne draw attention to a troublesome and contentious aspect of the criminal law of England as it stood in 1834. At that time, in principle and in the ancient Saxon tradition, an aggrieved party was still responsible for the prosecution of a criminal offender. He or she had to apply to a justice (or a magistrate in metropolitan districts) who would examine the allegation and any witnesses. In a prima facie case the justice would bind the complainant over to prosecute the alleged offender before a grand jury and at his trial if necessary. Henry Fielding’s innovations of 1750 had had an important impact on that process. The plain clothes detective officers employed by the magistrates undertook investigative work in the metropolis on behalf of their employers. But they did not take on every case, and had no obligation in law to do so.

The magistrates’ officers were also available for private hire, although the practice was officially frowned upon. In any case, only the wealthier sections of London society could afford to employ them. Most people were unwilling to spend either the time or the money required to pursue those who had offended against them. The common informer had long filled that gap in the criminal justice system. These were people willing to ‘inform’ the justices about the perpetrators of crime and to accept an obligation on behalf, or in place, of an uninterested or impecunious victim, to prosecute the criminal through the criminal justice system. The ‘informers’ reward was a portion of any fine or other penalty imposed on conviction. The opportunities for collusion, corruption and perjury are obvious, and were freely taken.

In their evidence Rowan and Mayne intimated as much when they expanded on their objections to the ‘common informer’ system. The Committee asked,

‘Now you have stated, that in your opinion, it would be advisable there should be no common informers allowed within the metropolitan district, but that the Police should take that duty on themselves; will you state your reasons for that to the Committee? - (Rowan and Mayne) I venture to recommend that the power of laying information should be confined to constables, or to persons interested or aggrieved for having suffered some damage or loss in the subject of complaint...The Police at present do not interfere so much as they might in laying informations, insasmuch as many
of the magistrates have stated, that it is not the duty of the Police, and that they will not convict parties on their evidence.\(^{25}\)

These passages in Rowan and Mayne’s evidence to the Select Committee shed a clear light on the role of their Force in the investigation and detection of reports and allegations of crime in the metropolis in the 1830s. The New Police had no direct part in it at all. Victims of crime had the first, and prime, responsibility to bring such matters before the courts. Then the justices (or magistrates) and any officers they, or the local parish or citizens association, employed had a role. Finally the ‘common informer’ made his contentious contribution to the detection and punishment of offenders. Only on the periphery of the process did the Metropolitan Police Force under Rowan and Mayne play their prevention of crime, deterrence and peacekeeping part, and their determination not to seek any additional powers for their constables shows they had no ambition to increase their involvement in these matters.

The attitude of the magistrates of the metropolis also supports Rowan and Mayne’s view of the role of their men. Many magistrates would not examine a suspected criminal offender solely on an information laid by one of the New Police. Some would not even allow a Metropolitan Police constable to lay such an information against a suspect, holding that it was no part of their duty to do so. It was that anomaly and the corruption caused by the common informer system that Rowan and Mayne wished to remove when they asked that their men be given the right to lay information before the magistrates. There is no sign that they wished to usurp the detective and investigative functions of the magistrates or any of their officers.

Reports of the Select Committees

The Select Committee on the Police of the Metropolis completed its Report on 13\(^{th}\) August, 1834, having received copies of the Reports of the Select Committees on Popay, and on the Coldbath Fields Riots of 1833. As has already been noted, no issues of importance on the question of the involvement of the New Police in crime and criminality arose from the Cold Bath Fields Committee Report.

The Report of the 1833/34 Police of the Metropolis Select Committee is highly complimentary to Rowan and Mayne. The Committee report to the House of Commons that,

\(^{25}\text{ibid page 392 at paras. 6252 to 6256}\)
'Your Committee have perused the Evidence and Reports of these Committees...and...deem it their duty to express their...opinion...that the Metropolitan Police Force, it's management, and the principles on which it is conducted, deserve the confidence and support of The House. That it is well calculated to check crime and to maintain the peace and order of the Metropolis, both effectively and constitutionally. ... The conduct of the Commissioners throughout these enquiries was highly honourable to them; and from the Evidence of various Witnesses, Your Committee are of opinion, that the conduct of the Men generally deserves the approbation of the Public.'

On the specific issue of the relationship between Rowan and Mayne's New Police and the magistrates of the police offices in the metropolis the Committee fudged shamelessly. It said,

'Your Committee are of opinion, that...the immediate general control over the Constabulary Force ought to be vested exclusively in the Police Commissioners. Your Committee do not propose to curtail by law the powers which the Magistrates of the several Police Offices possess as Justices of the Peace, or to define the exact boundaries by which the power of the Police Commissioners is to be separated from that of the Police Magistrates.'

The Committee did however, make one major point about the difference between the plain clothes detective officers employed by the magistrates and the constables of the New Police in the conclusion of their Report. They say,

'Your Committee...conclude with this Expression of their Opinion; viz. that the Metropolitan Police Force, as respects its influence in repressing crime, and the security it has given to person and property, is one of the most valuable of modern institutions. And the high character of those who now direct it, and the consequent improvement in the moral character and discipline of the Men, together with its successful working in practice, has clearly shown, that what, under the old Police, was considered by the Magistrates and the most experienced officers as a necessary evil, viz. flash houses, where the most vicious and desperate characters were allowed openly to assemble, hardening each other in their career of crime, and

---

26 Report of the Select Committee, etc. (1834), op cit. at page 21
27 ibid at page 17
Select Committees

seducing others, in order that they might be more readily secured when an adequate reward was offered, and the association of the Police Constables with low and infamous characters as a means of obtaining information, is not a necessary part of a system which has as its object only the prevention and detection of crime.\(^{128}\)

In these concluding paragraphs the Report of the 1833/34 Select Committee make explicit the distinction both in law and in practice between the officers (who were also legally constables) attached to the police offices of the capital under the magistrates, and Rowan and Mayne's constables. The magistrates' officers had a unique position in the criminal justice system. They alone among all the constables of the capital, had the power

'"to act as Constables for the Preservation of the Peace, and for the Security of Property against felonious and other unlawful Modes of obtaining the same, and for apprehending Offenders Against the Peace, as well as by Night as by Day"\(^{29}\)

The Committee was glad to note that such specialised investigative and detective duties formed no part of the policy or practice of the Metropolitan Police Force under Rowan and Mayne. In particular, it was pleased to find that the constables of the Metropolitan Police did not associate with active and known criminals in order to cultivate them and their acquaintances as sources of information about crime in the capital, a practice which the Select Committee determined to condemn.

To the contrary, the hope of the Committee was that Rowan and Mayne's New Police:

"may carry into practice, to the utmost extent, every measure which can augment the difficulty and multiply obstructions in the way of the depredator, as well as every arrangement best calculated to diminish the chances of a profitable conversion of property when dishonestly obtained. The former will tend to prevent, the latter diminish the motives to commit crime."\(^{30}\)

No better proof of the existence of that distinction can be given than that the Committee recommended, and Parliament enacted, no important changes in the

\(^{28}\) *ibid at pages* 21-22

\(^{29}\) 3 Geo. IV cap 55 (1823) *at section XXV*

\(^{30}\) *Report of the Select Committee, etc. (1834), page* 22
legislation supporting the powers and duties of the magistrates of the metropolis when the Police Offices legislation was renewed for a further 3 years on 18th June 1833.\textsuperscript{31}

'Executive' and 'Judicial' functions

Apart from what the Report of the 1833/34 Select Committee reveals on the issue of Rowan and Mayne's views on the employment of their men in the detection and prosecution of crime, one other aspect of the Committee's work is of interest. It is an apparently innocuous matter, but the involvement of the Committee in it had long term, complex consequences for the development of policing in Britain.

At the behest of Rowan and Mayne the 1833/34 Select Committee looked closely at the possibility of unifying all the remnants of the parochial constable and watch and ward systems still cluttering the policing of the capital. It did so as part of its understanding that it was the successor to the 1828 Select Committee, whose Report had led to the foundation of the Metropolitan Police Force in 1829. The Committee, like all its predecessors, jibbed at the policing fence still existing between the City of London and the rest of the capital. And it did not follow up Rowan and Mayne's suggestion that the magistrates' officers be 'replaced' by their men. But it decided strongly to recommend the amalgamation of the River Police, the constables appointed by the Westminster parochial authorities, and the horse patrols maintained by the police offices, with the Metropolitan Police Force.

Both Rowan and Mayne were eager to encourage the Committee along these lines, if only the remove the irritation and confusion that these separate jurisdictions caused within their bailiwick. Indeed, so anxious were the Commissioners about this problem that they had expressed concern about it well before the appointment of the 1833/34 Select Committee. On 20th June, 1832 Rowan had written a letter to Under Secretary Phillipps at the Home Office on the subject. In his and Mayne's evidence to the Committee on 15th July 1834 Rowan mentioned his letter to Phillipps.\textsuperscript{32} A copy subsequently appeared as an Appendix to the Committee's Report.\textsuperscript{33}

Rowan's letter complains of 'a want of cordial co-operation' from the magistrates offices and the officers they employed toward the new Metropolitan Police, and the 'embarrassments' that resulted from it. He sought Phillipps' support for some amendment to the Bill then being prepared to renew the Police Offices'

\textsuperscript{31} 3&4 Will IV cap. XIX (1833)
\textsuperscript{32} Parliamentary Papers (1834) vol. XVI at para. 4269
\textsuperscript{33} ibid at Appendix No. 12 pps. 473 and 474
legislation. In particular he asked that 'a distinct line be drawn, defining the duties to be performed by the Police Magistrates and by the Commissioners respectively.' Rowan suggested that,

'it should be declared that the duties of the Magistrates and the public offices should, in future, be purely judicial, whilst the duties of the Commissioners and the Metropolitan Police should be altogether executive.'

In this connection the earlier discussion of the position of the officers attached to the police offices should be remembered. When the Commissioners asked that the Metropolitan Police be given the 'executive' duties of the magistrates they clearly did not include the duties performed by the officers employed to act as agents for the magistrates in their 'judicial' functions of investigating reports and allegations of crime in order to identify and prosecute offenders. It is important, as will appear, that Rowan's letter is understood in this way, i.e. that it does not imply that the Commissioners were willing to absorb either the criminal investigative and detective duties of the magistrates or the officers specially employed on them.

In the event, neither Rowan's letter nor the rest of the Report of the 1833/34 Select Committee led to any immediate action on the issue. As has been noted, the problem of the relationship between the magistrates and the Commissioners was deliberately fudged in the Select Committee's Report. Nor, it would seem, was any action taken on the Committee's recommendation that all the different preventive and street police of the capital, including the uniformed foot and horse patrols attached to the Bow Street Office, be put under the direction of Rowan and Mayne. But Rowan's suggestion that a clearer division should be made between judicial and executive activities in the respective responsibilities of the magistrates of the metropolis and the Commissioners of the Metropolitan Police Force was not completely forgotten. It survived to have long term consequences for the future of policing.

Detective duties

One thing is unmistakable from a study of the evidence given by Rowan and Mayne to the Select Committees in 1833 and 1834. It is that the New Police had no responsibility for, and no desire to take on, the crime investigative and detective activities of the magistrates and the officers they employed, not even as part of the creation of a judicial/executive division between them. These are
duties in which the plain clothes 'Runners' specialised, and which both the 1833/34 Select Committee and Rowan and Mayne were more than happy to leave as the exclusive responsibility of the magistrates. For their part the Commissioners were no doubt pleased that, by their evidence to the Committees, they had managed to preserve and reassert both the independence of their Force from government control, and their purely preventive place in the battle against crime and disorder in the capital.
There the issue of the role and purposes of the New Police and its involvement in
crime and criminality rested until 1837 when the policing arrangements for the
metropolis again came on the Parliamentary agenda. Once more the legislation
supporting the activities of the magistrates of the police offices and the officers
they employed came due for renewal. By this time circumstances had altered
radically. Rowan and Mayne’s Metropolitan Police Force now had the confidence
of the vast majority of Londoners and their Parliamentary representatives while
the reputation and standing of the magistrates’ officers had declined. When yet
another Select Committee was appointed to enquire into the police offices it did
so ‘with a view to improvement of the same.”

Police Offices Select Committee of 1837/8

On 24th April 1837 the new Select Committee on the Police Offices of the
Metropolis called its first witness, Samuel March Phillipps, the long serving
Under Secretary at the Home Office. He was one of those principally involved in
the first foundation of Peel’s New Police and had been in post since its inception.
The Committee asked about the recommendations of the 1833/34 Select
Committee on the amalgamation of the various bodies of police in the metropolis.
Phillipps said that the Metropolitan Police had absorbed only the Bow Street foot
and horse patrols. The local constables appointed by the Westminster parochial
authorities, the River Police, and the City of London remained outside the control
of the Commissioners.¹

Pressed on that that issue Phillipps revealed, perhaps unintentionally, the reason
for the delay. He trenchantly defended the old system. He rejected the idea of
amalgamating the River Police with the Metropolitan Force when it was
suggested that might bring about ‘unity of purpose and action’ between them. He
dismissed the idea, saying, ‘I am persuaded there is more of sound than of
substance in that remark.” He went on to support the traditional role of the
magistrates of the metropolis as both investigators and adjudicators in cases
brought to them and in employing plain clothes officers to assist them in that
work. When asked,

¹ Select Committee on the Metropolis Police Offices (1837) Parliamentary Papers (1837-8) (451) Vol.
 XV pages. 309 et seq
² ibid. page 213 at paras. 1-6
³ ibid. at para. 19
'Do you conceive in reference to other offices that objections might arise, that such a course is objectionable, namely to the Magistrate interesting himself in the detection of that criminal whose case he has to decide upon afterwards?'

he replied, 'I should say not; decidedly not.'

The Committee then turned to the possibility, raised by the Commissioners with the 1833/34 Select Committee, that the magistrates' officers should be 'replaced' by Metropolitan Police constables. The 1833/34 Select Committee had decided not to recommend the idea, suggesting instead that the Commissioners should take over responsibility for the 'pay, clothing and general discipline' of the magistrates officers while leaving them 'under the immediate and direct control of the Police Magistrates'.

In a series of questions the 1838 Select Committee put this 'replacement' suggestion to Phillipps. He saw no benefit in the idea. The Committee pressed him to explain his objections to this and the other amalgamating proposals of the 1833/34 Select Committee. Phillipps defended the existing arrangements as according with both the law and the principles of the English criminal justice system.

The Chairman thought he saw an opportunity in this answer to get round Phillip's obduracy:

'The Committee understand, correctly, from your evidence, that there is no practical objection to that consolidation [of the policing of the metropolis] recommended by the [1833/34] Committee?'

He got a dusty answer. 'I think it would fail.'

Phillipps also gave evidence about the relative merits of the officers attached to the police offices and the constables of the Metropolitan Police in the detection of criminal offenders. The issue arose from an earlier answer. Phillipps had mentioned the growing practice of sending officers from London to assist in cases of serious crime committed elsewhere in the country. The Police Offices Select Committee expressed surprise that the Bow Street Magistrates met all such appeals, and that Metropolitan Police constables never responded to them. Following along the consolidating and amalgamating line being taken by the Committee, the Chairman asked;

---

4 ibid. at para 21
6 Select Committee, etc (1837), op. cit. at paras. 44 to 56
'Would it not be most advisable for all applications of that kind referred to
the Commissioners, who have a much wider selection of men to furnish the
demand you have spoken of, and would it not thereby prevent that
interruption to the system of consolidation which is desired?'

i.e. to the 'replacement' idea.

In a reply that supported his position on the magistrates' officers but which,
though true and justified, offended Rowan and Mayne's pride in their Force and
aroused their ire, Phillipps said;

'The officers attached to the police offices would be more expert in the
detection of crime than the common Metropolitan Police officers; they are
more practised in that particular business, more exercised in looking for and
searching out proofs, and therefore more expert in tracing out and detecting
crime, than the common Metropolitan Police officer.'

Four days later, on 28th April, the Committee recalled Phillipps to continue his
evidence. It asked if the Home Department planned to put forward amendments
to the Police Offices Act when its renewal was considered during the current
Parliamentary session. Phillipps said that only minor matters were contemplated.
The Chairman asked,

'No alteration in the law, and nothing to improve the administration of
justice? - (Phillipps) None to improve the administration of justice in the
police offices.

It was not contemplated then, to extend the jurisdiction, in any way, of the
Magistrates? - (Phillipps) That was not intended.'

Subsequently in his evidence that day Phillipps reinforced and confirmed the
Home Office position. He said that the Home Office neither required nor
expected major changes in the legislation on the policing of the metropolis,
despite the appointment of the Select Committee. The Chairman then put to him
a whole series of radical proposals the Committee apparently had in mind, aimed
at a review and restructure of the work of the police offices. He then asked
Phillipps,

'Would it not be desirable, in the present Act, to introduce a few clauses
embodying these improvements that you have expressed your opinion on?'

---

7 ibid at para.83
8 ibid paras. 125 to 151
He got a typically defensive mandarin response;

"They might be introduced into the Police Bill, if determined upon and settled, but I think the best course will be to introduce a temporary Bill in the present session to continue the Police Act which is about to expire, to the end of the next session; the alterations suggested, if they are to be adopted, will require a great deal of careful consideration, and ought not to be got up in a hurry."

Toward the end of his evidence on 28th April Phillipps made an important concession to the ambitions of the Committee on the issue of reform. It came in response to a question on something the Select Committee clearly saw as a persistent problem, i.e. what should be the proper relationship between the magistrates of the metropolis and the Commissioners of the Metropolitan Police. The framing of the question showed its origins in Charles Rowan's letter to Phillipps in 1832 on the subject of a judicial/executive division between the functions of the magistrates and the Commissioners, which had found its way into the Appendices to the 1833/34 Select Committee's Report. The 1837/38 Committee put their question on this letter to Phillipps in such a way that he had the unappetising choice of disagreeing with Rowan, or retracting his earlier support for the existing structure. Forced into that corner Phillipps agreed that,

"the general principle is right, that the judicial business should go to the magistrates of the police offices and the administrative or executive should go to the Commissioners."

This was a significant concession to the reforming intent of the Committee, as subsequent events were to prove.

There is more than a suspicion that the Committee ambushed Phillipps on this appearance before it. His answers to the Committee's questions and suggestions bear the mark of a man ill-prepared and under pressure. He misjudged the reforming mood of the Committee. He revealed self-satisfied inertia in the Home Office on the issue of the policing of the capital. He certainly underestimated the determination of the Select Committee to use the opportunity of the imminent expiry of the Police Offices legislation to conduct a comprehensive review of the whole of the criminal justice arrangements for the metropolis.

---

9 ibid. para 152
10 ibid para 162
Edward Gibbon Wakefield

In that ambition the Committee found an ally in the person of Edward Gibbon Wakefield, Esq. whom they called in and examined on 1st June 1837. Wakefield is a colourful figure. His claim to the attention of the Select Committee rested on two books. The first was an ambitious proposal for the colonisation of South Australia by means of cheap land sales to the labouring masses newly generated by urban and industrial growth. The second was a treatise on capital punishment in London and its lack of effect on the criminal propensities of the population. Both books drew on his experience as a prisoner in Newgate Gaol while serving a three year term for the abduction of a 12 year old heiress with intent to marry. On release from prison in 1829 he embarked on his South Australian colonisation project and later stood as MP for Birmingham in the 1836 Parliamentary election. He was disappointed in both schemes.

Wakefield strongly criticised the performance of the Metropolitan Police Force in the detection and punishment of criminals. He thought the Force effective in 'maintaining order, in preventing nuisances, in driving out of sight many evils which still exist.' But he did not think it had had any effect in rooting out the 'prompters of crime', by which he meant those who recruited young people to take up a criminal way of life. Such characters are immortalised by Charles Dickens' Fagin in 'Oliver Twist'. In Wakefield's opinion the Force had not restricted the activities of these receivers of stolen property in the capital.

It is notable that the Committee did not press Wakefield on these criticisms of the Metropolitan Police. The earlier 1833/4 Select Committee had clearly confirmed that it was no part of the duty of Rowan and Mayne's men to seek out and prosecute the 'prompters' of crime. That was the duty of the plain clothes and other officers employed by the magistrates. Indeed those officers had been given special powers in law not available to Metropolitan Police constables to enable them to carry out that work. Those earlier findings must surely have been known to the members of the 1837 Select Committee. If not, then they ought to have been. They provide a complete answer to Wakefield's comments. But they were not put to him.

---

11 ibid. page 433 at para. 1192
12 ibid. page 434 at para. 1194
Having been allowed to launch these unjustified and indeed, unwarranted accusations against Rowan and Mayne, Wakefield was then asked about the opinions expressed in his second book. He said that punishment, even public executions, had little or no deterrent effect on criminal behaviour. He therefore dismissed that approach to the reduction of criminality.

That forthright declaration led the Select Committee to draw him out on the subjects of the investigation of crime and the detection of offenders. The exchanges are lengthy but are worth reproducing. They show that, from his own knowledge and despite his earlier disparaging remarks, Wakefield recognised that Rowan and Mayne's men had no responsibility for the investigation and detection of criminals. The exchanges also shed an illuminating light on the practice and understanding of crime control in nineteenth century England.

The Chairman asked Wakefield,

'...There being, therefore, so many fertile sources of crime in the metropolis, is it not desirable that some much more efficient means of detection should be afforded? - (Wakefield) Most desirable, as it appears to me; for although one cannot say that the detection of crime in London is exactly nobody's business, still it is very difficult to point out whose business it is; if a person is robbed in London, it seems to be nobody's business but his own; at least there seems to be no public functionaries whose business it is to detect the person who commits that crime.'

The Chairman pressed him on that point.

'In fact you would confine the business of detection to persons properly qualified, having a duty of that nature specially intrusted to them? - (Wakefield) It has always appeared to me that there should be some class of police officers apart from all the others,...whose sole business should be as far as possible to hinder the commission of crime by rooting out the nurseries of crime, and to detect crime by pursuing thieves and tracing stolen goods, and by all the other methods in which crime is detected.'

Wakefield's answers to the Committee accurately report the situation in the metropolis in 1837. No one individual or organisation had overall responsibility for the investigation of crime, or for the identification, detection and pursuit of criminal offenders. The magistrates officers might be persuaded (by promises of

---

13 ibid page 437 at paras. 1205 and 1206
rewards) or directed (by the magistrates) to pursue offenders, but they had no overall responsibility for the detection of crime in the metropolis. Wakefield's evidence is also that responsibility for the investigation of reports and allegations of undetected crime did not fall within the remit of the Commissioners of the Metropolitan Police Force, even by default. Yet the Select Committee did not take him back to his earlier criticisms of Rowan and Mayne's alleged failures in this respect, as they might well, and indeed ought to, have done.

Taken as a whole it is possible to infer from Wakefield's evidence and from his character that he saw the situation he described to the Select Committee as an opportunity. The conjecture is that Wakefield had some hope that he might be appointed to undertake the responsibility for 'rooting out of the prompters of crime' in the capital. Given his lack of success in other attempts to establish himself in a worthwhile career, the suggestion must be that Wakefield was not simply aiming to inform the Select Committee. He was also trying to get himself a job as public prosecutor, and/or pursuer and rooter-out of criminals.

Shortly after hearing Wakefield's evidence, and in an odd parallel with the experience of its 1833/34 predecessor, wider events interrupted the Select Committee's work. On this occasion it was the sudden death of the King and the accession of the eighteen-year old Victoria to the throne. On 28th of June the Committee reported that, 'the unexpected and melancholy demise of his Majesty ... have induced Your Committee to suspend the further progress of the Inquiry'. The Select Committee then closed its proceedings with a recommendation that Parliament should renew the Police Offices Act as a temporary measure and re-appoint it to complete its work in the next session.

The Commissioners and amalgamation

When it resumed the next year, the Select Committee called Rowan and Mayne back before them on 1st and 9th of March. They put two issues to the Commissioners. One was the amalgamation of all the patrolling police establishments in the capital with their Force, which they had earlier discussed with Under Secretary Phillipps. The other was the evidence of Wakefield about the lack of an effective means of detecting crime in the capital.

Dealing with the first issue, Rowan and Mayne were still in favour of incorporating all the remnants of the old parish-based policing system into their Force. They had, after all, asked as much of the earlier 1833/34 Select Committee. Yet the police offices, the River Thames, the parish of Westminster
and the City of London still had their own constables. Rowan and Mayne were eager to use the opportunity presented by the appointment of the Committee finally to remove the anomalies and irritations caused by these separate police establishments operating within their area. The City was exempt from the provisions of the founding 1829 Metropolitan Police Act. It had stubbornly used its powerful financial and economic position to remain an island of the old system surrounded by the New Police. Nevertheless Rowan and Mayne were ready to indicate their willingness to absorb it and all the other existing police establishments in the metropolis."

The initial suggestion by the Select Committee on this occasion was a straightforward transfer of all these parochial constables into the Metropolitan Police Force. The suggestion met with a surprisingly cautious response from the Commissioners. They merely asked if the funding for all those men would follow their transfer." The Chairman then tried to clarify their view by the tactic he had used when dealing with the evidence of Under-Secretary Phillips and at this point matters began to get confused. He asked,

‘You see no practical objection, then, to your being invested in fact with all the executive duties of the police of the metropolis, taking that in its largest and most practical extent?’

The question clearly again returns to Rowan’s letter of 1832 to Under-Secretary Phillipps that now formed an Appendix to the 1833/34 Select Committee Report. That letter had advocated just such a division of work as between the magistrates of the metropolis and the Commissioners of the Metropolitan Police. The Commissioners followed Phillipps line in dealing with it. They said, ‘We do not think that any practical difficulty exists’.

Richard Mayne then went on to expand and clarify that answer. He made it clear that what the Commissioners wanted was for the magistrates to give up responsibility for all the practical work arising from their judicial functions; i.e., the execution of warrants, the service of summonses, etc. That would end the confusion of the existing arrangements in which the magistrates either kept such work to themselves, i.e. assigned it to the officers they employed, or allocated it at their whim to one of the other police establishments in the capital, including, of

---

14 Report of the Select Committee on the Metropolitan Police Offices, Parliamentary Papers (1837/8) Vol. XV pages 440 to 442 at paras. 842 to 857
15 ibid. para. 858
16 ibid. page 442 at para. 859
course, to the Metropolitan Police Force. Predictable conflicts and clashes resulted, usually from failures in communication. Mayne said, in support of the proposition in Rowan’s letter and the evidence given earlier by Under Secretary Phillipps, that,

‘such an arrangement would more completely effect the proposed separation of the judicial and executive duties of police, and would prevent any prejudicial interference between ... the magistrates’ offices and the general body of the police,’

He then described the support the magistrates might expect under this arrangement, saying,

‘that, if such a plan were adopted, the entire body of the police would then feel it their duty and be equally interested to act in execution of the warrants of the magistrates, and assist in getting up the evidence in cases before the magistrates, or in any other way that might be useful.’

In further exchanges the Committee suggest that the existing police office officers might remain in their posts but be stripped of their police powers, so that they would ‘be more in the nature of ushers and door-keepers than officers of police.’

Rowan agreed with another surprisingly modest response. Instead of simply accepting the suggestion, as well he might, he said,

‘It would be idle to say we imagine the great mass of the metropolitan police officers are equal in skill to the chosen body of officers the magistrates have had under their orders; but I believe (and we can corroborate that fully) there are a number of men in the metropolitan police more than equal to the number of those in the magistrates’ offices, who are quite equal to any duty, be it what it may.’

adding,

‘There is no sort of police duty which we could not find an officer well qualified to perform....And those officers of the metropolitan police are under the observation of the magistrates as much as the officers under their more immediate orders.’

Clearly, in these two responses Rowan and Mayne are encouraging the Select Committee along its amalgamating and unifying line. But in view of the widely

---

17 ibid. page 443 at para. 862
18 ibid. at para. 864
differing duties and functions of the magistrates officers and the constables of the Metropolitan Police these exchanges cannot amount to an agreement by Rowan and Mayne either that they should absorb all the remaining magistrates officers into their Force (the Committee suggest some should be retained as ‘ushers and door-keepers’), or, more importantly, that all the activities those officers could be, or should be, transferred to their men. The Commissioner’s focus is on the need for a judicial/executive division as between themselves and the magistrates; and on the problem of ‘prejudicial interference’ between the ‘executive’ activities of their constables and the magistrates officers arising from a failure to make that division. And it should also be noted that Mayne’s claims for the skills of his constables relates to their performance of duties ‘under the observation of the magistrates’, i.e. while they are engaged in those shared ‘executive’ functions.

The present-day observer might regard this as a subtle distinction, but the Report of the 1833/34 Select Committee with its condemnation of any ‘use of spies’ by the Metropolitan Police, on which the Commissioners and the Committee were agreed, makes the matter clear. In 1838 ‘executive’ duties in the policing of the metropolis did not include the magistrates ‘judicial’ function of the investigation of reports and allegations of crime in which their own employed officers (which might on occasion include one or more of Rowan and Mayne’s constables on loan or attachment) acted as their agents. Thus, in their response to the Select Committee on this occasion Rowan and Mayne do not accept, nor does the 1838 Select Committee propose, that they or their constables should take over any of the magistrates’ existing judicial responsibilities in relation to crime investigation and criminal prosecutions. There are signs however, that the Select Committee did not quite grasp, or perhaps never understood, either the complexities of the subject they were discussing or the subtleties of the Commissioners’ position on it.

The Commissioners and the duties of the magistrates

Symptoms of a misunderstanding between the Commissioners and the Committee appear almost at once when the Committee tried to deal with the implications of the proposed changes in the relationship between the magistrates and the Commissioners. Rowan and Mayne demurred when the Committee suggested that Superintendents of the Metropolitan Police should take charge of all cases ‘sent before the magistrates, or to trial from his division’, in effect to become the
public prosecutor for their districts." Pressed by the Committee, the Commissioners agreed that such a public officer was desirable, and allowed that it was possible that he might be an officer of police. Rowan and Mayne were able to give that ground because the Committee revealed at this point that it was thinking in terms of the continental system of public prosecutors. This was the system already operating in Scotland and Ireland whereby a public official undertook responsibility for the investigation and prosecution of criminal cases before the courts. Rowan and Mayne could safely agree with that proposal. It was similar to one put forward by Wakefield. He had proposed that a new and separate element be added to the English criminal justice system to undertake the identification, pursuit and prosecution of criminal offenders. Since the Commissioners were already clear that they did not have, and had not agreed to undertake, those responsibilities, such a development could take place without touching upon, or adding to, any of the existing duties and functions of the Metropolitan Police.

Later the Select Committee further explored the theme of a division between judicial and executive functions in the criminal justice system of the metropolis. They suggested that the Commissioners might wish to take on one of the main responsibilities of the magistrates, and issue warrants in cases of felonies and other offences. Now Rowan and Mayne took alarm and dug in their heels. They flatly rejected the idea saying, ‘We do not think it would be desirable or convenient for the public.’ Significantly, they also rejected outright a proposal to give them control of some of the ‘nests of crime’ mentioned by Wakefield. The Committee then offered to give them power over low brothels and lodging houses. This was also rejected. It is a pity that the Select Committee did not go on to clarify why the Commissioners refused these offers of greater power. Had it done so it might have discovered Rowan and Mayne’s unwillingness to become involved in the criminal investigative, detective and prosecution responsibilities of the magistrates and their officers.

The Commissioners and crime

The reason for that reluctance was revealed but, it would appear, not grasped by the Committee when Rowan and Mayne returned to the hearings a week later on

---

19 ibid. at para. 866
20 ibid. at paras. 867 to 871
21 ibid. page 444 at paras 872 and 873
22 ibid. page 445 at para 880
23 ibid. page 445 at paras 885 and 886
9th March. In the interim they had received a copy of the evidence given to the Committee the previous year; that is, before the death of the King and the interruption of its proceedings. The Select Committee wanted Rowan and Mayne to review their position after considering the evidence of other witnesses. Rowan and Mayne may by then have had second thoughts about the extent of their earlier concessions to the amalgamating ambitions of the Committee. They may also have baulked after reading what others, especially Phillipps, had said earlier. Or it may simply be that both they and the Select Committee recognised a need to clarify their evidence or clear up some differences between their evidence and that of other witnesses. But for whatever reason the proceedings of the Committee do not follow their usual pattern on this occasion. After some preliminary inconsequential inquiries about the treatment of vagrants, the Committee interrupted its questions to invite the Commissioners to comment on the evidence given by earlier witnesses.24

Rowan and Mayne’s response to this opportunity shows that, for their part, they were anxious to correct any misunderstanding arising from their agreement to a judicial/executive division of responsibilities between themselves and the magistrates of the metropolis. They began by responding to the evidence of Edward Gibbon Wakefield and his criticisms of the New Police as failing adequately to deal with either the prevention or the detection of crime in the metropolis. They then went on, in a unique and important passage,25 to set out their view of what the New Police could, and should, do in the battle against crime in the capital, and the limits of their powers and responsibilities as they understood them. They are clearly speaking from a carefully prepared script and their remarks on this occasion should have cleared up any earlier ambiguities in their evidence to the Committee.

Dealing first with Wakefield’s charge that ‘the metropolitan police have not been useful in preventing crime’ the Commissioners began by explaining that, insofar as they understood their duties, they did not follow the distinction between the prevention of crime and its detection which was made by other commentators, including and especially by Wakefield. They had a specific and unique view on that issue, based firmly on their Force being a purely preventive element in the criminal justice system. They said,

---

24 ibid. page 462 at paras. 1087 and 1088
25 ibid. page 462 at para. 1088
"We would remark ... that by many persons there is a wider distinction
drawn between the prevention of crime and the detection of crime than is
warranted by a consideration of the subject, at least as regards the
operations of a street police; which we would explain thus: Suppose, for a
moment, a police to be so numerous as to render the commission of crime
in the streets impossible, without being seen, and the party detected in the
act; this would be decided prevention, but merely by fear of instant
detection and subsequent punishment. On the other hand, suppose that
every crime committed, without exception, were detected immediately, or
within a certain number of hours afterwards, the effect in the prevention of
crime would be nearly, and the principle altogether, the same as in the first
supposed case, viz. the fear of being immediately brought to justice. If
this view be correct, detection, as far as it goes, is prevention, as regards a
street police."

As to the prevention of crime the Commissioners went on to say,

"It being impossible, however, in such a district as that of the metropolitan
police, to prevent crime by the actual presence every where of the
constable, we would advert to a simple mode of prevention of another
kind."

They then presented to the Select Committee a paper showing the number of
offences against property committed in the metropolis for the previous year
(1837). The total was 8,821. Of those offences the Commissioners estimated
that some 6000 'might have been prevented by a little precaution on the part of
those upon whom the loss has fallen;’ They say that;

"this is the prevention to which we refer, and which is so much the more
desirable, as these are chiefly cases which it is next to impossible for any
vigilance on the part of the police to prevent’

This is an importance passage in the Commissioners’ evidence. It shows that
they had an entirely different view of the distinction between the prevention and
detection of crime from that made by other commentators. Insofar as they
understood their responsibilities they regarded the patrolling activities of the
uniformed constables they employed as adequately serving both purposes. As
they had tried to make clear to the earlier 1833/134 Select Committee, their 'street
police' could do no more that deter miscreants by their presence, and detain those
caught in the act of crime. The prevention of 'cases which it is next to
impossible for any vigilance on the part of the police to prevent' was a responsibility of others, not one they bore alone.

For the sake of clarity, the Commissioners then set out the extent of their contribution, as a street police, to the detection of crime in the metropolis. They say that when any of their constables discovers, or receives a report of, a crime, ‘route papers’ are prepared and circulated. The system was that the police division where the offence occurred initiated these route papers. The Superintendent (or the Inspector on duty if the Superintendent was not available) then circulated them to all the other divisions of the metropolitan police. Each division through which they passed noted the time of receipt on the back. In the morning all route papers arrived at the Commissioners office for perusal and comment. Provided no further immediate action arose from the papers, a report of the crime went to the Bow Street Police Office for inclusion in the printed daily police report prepared and published by the Chief Magistrate, together with ‘any clue…or any thing which they think will facilitate the detection of the offender’. In addition, the Commissioners sent descriptions of any property stolen to all pawn brokers and marine store dealers in the metropolis, with a warning not to receive the property described.

The ‘route papers’ also recorded ‘the name of the police constable who was on the beat where the felony took place…and the name of the constable whose particular business it was made to trace the offender’. Whether or not this aspect of the ‘route papers’ system confused the Select Committee is not clear from its subsequent proceedings. Rowan and Mayne do not mention at this point the occasional employment of their constables to work under the directions of the magistrates in specific cases, an ad hoc arrangement which they had described to the 1833/34 Select Committee, although for completeness it might have been helpful had they done so. But the strictly limited extent of the involvement of the constables of the Metropolitan Police in the investigation and detection of crime ought to have been apparent in the Commissioners’ answers to the next two questions put to them.

In answer to Lord Hotham, Rowan said that the process described was ‘in all cases followed if the circumstances are such as to permit of it being employed with any hope of a favourable result’, to which Mayne added, ‘And to the proper

26 ibid. pages 462 and 463 at para. 1088
27 ibid. page 463 at para. 1088
28 ibid para. 1089
After further remarks by the Commissioners the Chairman (Mr. Benjamin Hawes) then asked, 'Are there not classes of crime which arise from causes beyond the reach of police regulations?' Rowan's response was to refer to the paper on crime in the metropolis which the Commissioners had just discussed with the Committee when setting out their view of their responsibilities for the prevention of crime. He pointed out that only 12 of the 26 categories of crime listed on that paper could properly be regarded as being within the responsibilities of a 'street police', i.e. could in any way have been prevented or detected by a patrolling constable.

What the Select Committee may have failed to understand is that the Commissioners' route papers simply put the old Saxon 'quick and fresh pursuit' and 'hue and cry' on a formal basis. Their system did no more than communicate news of the crime to all the constables on duty in the Metropolitan Police district and then ensure that all necessary action to detain nearby or immediately available offenders had been taken. By an extension of those responsibilities constables might be assigned to the attempt to trace a fleeing offender or even temporarily employed in plain clothes to identify him where, as the Commissioners put it, there was 'any hope of a favourable result' and 'to the proper extent in every case'. But if, by a further extension of the system, a Metropolitan Police constable was employed by a magistrate for the investigation and detection of an escaped or unidentified offender, then the Commissioners took no interest in what he did, nor had any responsibility for it, as Mayne had told the 1833/34 Select Committee. But none of those extensions or exceptions altered the essentially limited nature of the Commissioners 'route papers' system, which was very much more concerned with mollifying victims and answering any subsequent criticisms of the immediate actions of their Force than with the identification and detection of the perpetrators of crime, which remained the responsibility of the magistrates.

If the Select Committee was unclear on these points it was not helped by Richard Mayne. He was unable to resist the temptation to add a final flourish to the evidence of the Commissioners on these matters and rebut the slur earlier cast on the abilities of his constables by Under Secretary Phillips. He ended his remarks on the route papers system by boasting that it had had some success in crime detection. He said;

29 ibid
30 ibid para 1090
'We have had several...cases...which shew there was as great a degree of skill available on the part of the officers concerned, as could be shown by any other body of police'31

All Mayne meant to imply in this codicil to the Commissioners evidence at this point is that where Metropolitan Police constables were employed to pursue offenders under the 'route papers' system and its extensions, they were as good at catching criminals as any others engaged in the work in the metropolis, such as parochial constables and the like, including presumably therefore, the magistrates officers and not excepting the plain clothes detective 'Runners' themselves. He does not suggest that the Commissioners had any responsibility for such work, or that it formed any part of the normal duties of their constables. And in their other answers to this, and previous, Select Committees the Commissioners sought to make it clear that they had no reason or any wish to take it up.

Unfortunately Mayne in particular had too often over-complicated these matters. Neither the evidence of the Commissioners to the Select Committee in the session before its adjournment in 1837 nor their subsequent attempt to clarify their attitude toward detective work in their later appearances before the Committee was sufficiently clear or coherent. The Commissioners had overreached themselves in their anxiety to bring about an amalgamation of the 'executive' policing of the capital and to reject Under Secretary Phillipps' adverse view of the detective ability of their officers. So they allowed themselves the luxury of boasting and in the process confused the Select Committee.

Subsequent events give weight to the conjecture that the Committee may have gained the false impression from the Commissioners evidence that they were both able and prepared to absorb all the criminal investigative and detective responsibility of the magistrates officers, including all the plain clothes activities required for the judicial function of identifying, detecting and prosecuting criminals. The Commissioners' later efforts to explain the subtleties of their position on these issues seems to have fallen on stony ground. Their explanation that their Force was a 'street police' with a field of effective action limited to preventable offences and the 'quick and fresh pursuit' of offenders may not have registered with the Committee. Nor did Committee members seem quite to grasp, or simply could not understand, that Rowan and Mayne regarded the uniformed patrolling activities of their constables and their immediate efforts to detain

31 ibid. page 463 at para. 1088(end)
offenders when they failed to prevent a crime as a full description of the responsibilities they were prepared to accept, and as adequately and successfully serving both the prevention and the detection of crime as they understood it.

**Misunderstandings**

For whatever reason the 1837/1838 Select Committee seems to have wrongly concluded that the Metropolitan Police both could and would take up all the whole of the policing of the capital including providing replacements for all the officers presently employed by the magistrates. The error may have been avoided had the exchanges between the Commissioners and the 1837/38 Select Committee dealt explicitly with the work of the specialist detectives among the magistrates' officers - the 'Runners' and their imitators - or their criminal-associative and informant-cultivating activities. But they did not do so and there are two good reasons for this unfortunate omission. First, those activities had a dubious basis in law and were only unofficially sanctioned by the magistrates. And second, the Commissioners and the Committee were in agreement on the issue. They both condemned the close involvement of the magistrates' officers with the criminal classes and wished to see it ended.

It is also reasonable to assume that the Select Committee and the Commissioners believed that the judicial/executive division of responsibility they proposed to establish in the capital, coupled with the growing success of the New Police, would make such work unnecessary. That however, was a serious misjudgement. Growth in both the quantity and complexity of crime led to an increase rather than a decrease in the demand for the detective duties of the magistrates' officers, and especially for the specialised skills of the plain clothes 'Runners' and their imitators. That understandable mistake had the most serious consequences for the future of Peel's New Police.

Rowan and Mayne were amongst the last of the witnesses called before the Select Committee on the Police Offices. Its Report was published to Parliament in July 1838. Its findings and conclusions were the starting point for a revolution in the development of policing in Britain.
Acts and Consequences

By order of Parliament the 1837/38 Select Committee on the Metropolis Police Offices published its Report on 11th July 1838. The Committee’s terms of reference focussed on the need to review and reform the magistrates offices of the metropolis. The chief influence on its conclusions and recommendations was the emergence and success of Peel’s New Police under Commissioners Rowan and Mayne.

Government, as represented by Under Secretary Phillipps and the Home Office, had expected little to come of the Committee’s work but the imminent expiry of the legislation that supported the police offices gave the Committee an opportunity it exploited to the full. It decided on a radical restructure of the functions and duties of the magistrates of the metropolis and to raise their status and pay accordingly. At the same time the Select Committee took the far-reaching decision that henceforward the magistrates would perform purely judicial functions and rely on the Metropolitan Police for the discharge of their traditional executive duties. The outcome was the passage of two Acts of Parliament in the following year, the Metropolitan Police Act (2&3 Vict. Cap. 47), and the Metropolitan Police Courts Act (2&3 Vict. Cap. 71).

The hasty Acts of 1839

Regrettably, despite Under Secretary Phillipps’ warning to the 1838 Select Committee that changes to the police offices legislation ‘ought not to be got up in a hurry’, neither Act received the drafting and careful consideration they deserved. The Select Committee Report was with Parliament in July 1838. The Bills to implement its recommendations were delayed for seven months; first, by the Home Office unpreparedness revealed in Under Secretary Phillipps’ evidence to the Committee,1 and second by the difficulty of drafting their complex, contentious and interlocking provisions. The Bills finally came on the Parliamentary agenda in February 1839. Time was by then short. The Session was due to end in October and both Bills were contested measures. Each had to pass through both Houses of Parliament before the end of the session else they would fail and need re-introduction. Speed was necessary because the legislation supporting the existing Police Offices was about to expire. The

---

1 Select Committee on the Metropolis Police Offices (1837) Parliamentary Papers (1837-8) (451) Vol. XV pages. 309 et seq. at paras 125 to 131
problem was that the Bills were inseparable. Since they dealt with the redistribution of activities between the magistrates courts and the police they stood or fell together.

When the Bills came into the House of Commons Members of Parliament (MPs) complained about their clumsy drafting. During the Committee stage of the Metropolitan Police Bill;

'Mr. Duncombe could not but think that the whole of the bills which had been introduced for the improvement of the metropolitan police very clumsy and bungling pieces of legislation. Already had the House been favoured with no fewer than three or four editions of these bills. The first was scarcely intelligible and the resolution they were now called upon to sanction partook largely of the same character.'

He was speaking on the clause that dealt with the relatively simple matter of an increase in the salaries of the Commissioners.

When the same Metropolitan Police Bill reached the House of Lords, Lord Ellenborough complained that it mixed together far too many different kinds of legislation. He thought it ought to be at least four separate bills. But, 'because there had been great difficulty in getting this Bill through the House of Commons, as it was, and he might thereby endanger its passing at all,' he would not propose any amendments.

But neither the complexity and incoherence the Bills, nor that too little time had been allowed for Parliament to consider them was the principal difficulty facing government. It was that the Bills aroused passionate opposition. The Metropolitan Police Bill proposed to amalgamate all the differing police establishments of the metropolis into Rowan and Mayne's Force as recommended by the Select Committee, thus ending all local involvement in the policing of the capital. The plan included the City of London, with predicable results. The City Corporation and its many supporters in Parliament launched a weighty and well-constructed counter-attack. As a result MPs almost immediately struck out the first ten clauses of the Police Bill in order to preserve the independence of the City police.

---

2 Parliamentary Debates (Hansard) (1839) vol. 48 pps 711-712
3 ibid. vol. 49 page 927
4 ibid. vol. 48 page 133
Serious though that set-back was, it was not the main objection to the legislation. MPs took alarm at what they perceived to be an increase in the power and jurisdiction of the magistrates just as they were coming under the authority of the Secretary of State. The Bills were thus seen as combining an assault on the right of trial by jury to an intolerable extension of the powers of the government. The combination allowed MPs to wrap their attack on the Bills in a cloak of freedom and the liberty of the subject. They made the most of the opportunity.

The Courts Bill proposed to replace the police offices of the metropolis with police courts headed by paid magistrates. The new magistrates lost their executive functions but gained summary jurisdiction to hear and determine cases, including minor crime. In addition it was proposed that a single magistrate could hear any case. The Secretary of State was given power to appoint all the magistrates; could make regulations for their conduct; and could dismiss them if he found them unsuitable. In parallel, the Police Bill greatly extended the authority of Rowan and Mayne’s men to arrest citizens and bring them before the new government-appointed magistrates. The combined effect of these proposals provoked outrage.

Mr. Law, speaking in the Commons during the Committee stage of the Courts Bill said that, ‘He did not apprehend that such propositions ... would, at any former period of the history of the country, have been entertained for one hour’. Colonel Sibthorp objected to the Third Reading of the Police Bill because, ‘a more noxious and oppressive measure never had been introduced to Parliament’, while Mr. George Palmer opposed the Third Reading of the Courts Bill because its passage would do, ‘more ... to destroy the constitution of the country than could be accomplished by all the efforts of the Radical reformers.”

Lords Broughton and Lyndhurst made desperate attempts the delay the Bills in the House of Lords. Their aim was to hold them up to the end of the session and so kill them. Their Lordships focussed their main effort on the Courts Bill since it contained the provisions that most clearly increased the role of government in the criminal justice system of the capital. Their Lordships allowed the Police Bill through its Third Reading to await Royal Assent, and then Broughton and Lyndhurst launched a savage assault on the Courts Bill in its Committee Stage, managing to mangle it sufficiently to drive it back to the Commons for

---

5 ibid. vol. 49 page 534
6 ibid. page 435
7 ibid. page 1385
reconsideration. But by desperate improvisation both it and its companion Police Bill scraped through before the close of the Session. The Police Bill received Royal Assent on 17th August 1839 and the Courts Bill became law nine days later on 26th August 1839, the very last day before the prorogation of Parliament. Four days later Henry Phipps replaced Lord John Russell as Secretary of State for Home Affairs.

Some of the exchanges that marked the last despairing effort of their Lordships to thwart the Bills are worth reproducing considering the importance of this legislation for the future of policing in Britain. One such took place during the Committee stage of the Courts Bill. Their Lordships were debating Clause 3. It dealt with the payment of magistrates. Lord Brougham objected in principle to the clause, picking up the point that it gave great power of patronage to the Secretary of State.\(^9\) Lord Lyndhurst joined in to say,

\[
\text{`Now considering the time at which the bill had come up from the other House, was it not reasonable to ask to continue for another year the present system?'}\(^{10}\)
\]

Viscount Duncannon, the government minister responsible for getting the Bill through the Lords, rejected that idea. Lord Lyndhurst tried another tack.

\[
\text{`If this Bill really was founded upon the reports of the Committee of this and the other House, it ought to have been brought forward at an earlier period, so that its provisions might have been compared with those reports and the evidence on which they were founded.'}\(^{11}\)
\]

Clearly Lord Lyndhurst is complaining that the Bills were before Parliament when members had had no opportunity to read and absorb the Committee reports on which they were based. The legislators had to implement conclusions drawn from information they did not have.

Again Viscount Duncannon refused to budge. Lord Brougham then returned to the fray.

\[
\text{`When the money [for the magistrates] was voted by the House of Commons 600 members at least had gone away. In fact it was voted by a House which hardly existed but by a bare quorum'}\]

\(^{8}\) ibid. vol. 50 pps 183 to 192
\(^{9}\) ibid. page 185
\(^{10}\) ibid. page 186
\(^{11}\) ibid. pages 186-187
Viscount Duncannon replied that, ‘the Bill had been a long time before the other House and he never remembered any bill to have undergone more discussion.’

Brougham snapped back.

‘I beg my noble Friend’s pardon. The bill got into Committee in the other House only a fortnight since, and it was then discussed. The state of the House on that discussion was shown by the divisions upon it, which consisted of ten or fifteen to thirty Members.’

These exchanges illustrate how hurried and ill-informed was the thought given to these important Acts. Both Houses of Parliament recognised how radical they were. It is apparent that both Commons and Lords felt that insufficient time had been allowed fully and carefully to discuss and examine the Bills as they passed through their stages in Parliament. That fault must lie with government. The Select Committee of 1837/38 published its Report in July, 1838. Seven months later the rush to get the Bills through Parliament began. It ended with the Courts Bill going through all its stages in the House of Lords in eleven days. But the unreadiness of both the Commons and the Lords to debate these important matters is also due, at least in part, to their own neglect.

The Royal Commission of 1839

On 27th March 1839 just after the Police and Courts Bills first appeared on the Parliamentary agenda a Royal Commission sitting to ‘inquire as to the best means of establishing an efficient Constabulary Force in the counties of England’ presented its First Report. Full-time, paid, police forces on the model of the Metropolitan Police were already emerging in British cities. Former Metropolitan Police officers commanded many of them. The remit of the Royal Commission was to examine the implications of an extension of Peel’s New Police to rural areas. Members of the Royal Commission were Charles Shaw Lefèvre (soon to be Speaker of the House of Commons); Edwin Chadwick, the well-respected social reformer, and Lt. Col. Charles Rowan, joint Commissioner (with Richard Mayne) of the Metropolitan Police Force.

The Royal Commission was in session throughout the proceedings of the 1837/38 Select Committee and its first Report was presented to Parliament during the passage of the 1839 Metropolitan Police and Courts Bills. In parallel with the Select Committee, the Royal Commissioners examined the respective roles of

12 ibid. page 187
justices and constables in the English criminal justice system. Unlike the Select Committee the Royal Commission undertook a detailed and comprehensive analysis of the history and development of policing in Britain. On that much better base its proposals for the future of the criminal justice system differed significantly from those of the Select Committee.

Two important points made by the Royal Commission do not appear in the Report of the Select Committee. First, the Royal Commission identified a need for legislative action if ordinary constables, rather than officers working under the direction of the magistrates, were to undertake even 'preliminary enquiries' into reports of crime or offences. And second, Chadwick and his fellow Royal Commissioners saw the vital importance of the appointment of a 'public prosecutor' if responsibility for the pursuit and detection of offenders no longer fell on the magistrates and their officers. It is not clear from the available public records whether or not these finding of the Royal Commission were known to Rowan when, with Mayne, he gave evidence to the 1838 Select Committee on the Police of the Metropolis.

**Enquiry into crime**

On the first point, the Royal Commission closely examined the historic relationship between constables and justices. It found that the common law had originally assigned the 'function of enquiry' to constables in relation to crimes committed within their bailiwick. However, constables progressively lost that function over the centuries following their first regulation by the Statute of Winchester. In that period the King's justices gradually assumed the prerogative to make 'preliminary inquiries' into criminal cases. Later, Henry Fielding and his successors expanded and developed that activity of the justices. They introduced the investigative and detective work of the officers attached to the police offices, but they ensured that these officers worked under the direction, and used the powers, of the magistrates rather than their own as constables. The Royal Commissioners contrasted that development with the procedure still in force in cases of suspicious death. They found that the coroner still relied on local constables to gather evidence for his inquest.

In their Report to Parliament the Royal Commission drew attention to this anomaly, and proposed that the old powers of the constables to enquire into

---

13 First Report of the Royal Commission on Establishing an Efficient Constabulary Force, Parliamentary Papers (1839) vol. XIX page 100 at para. 114
14 ibid. page 101 at para. 116
crimes reported to them should be restored. Under the heading ‘Abandonment of the principle of preliminary enquiry’, it said that,

‘it appears to be highly desirable that additional powers for securing important evidence should be given by the legislature, and that the principle should be uniformly put into practical operation by virtue of a legislative enactment. The speedy enquiry gives operation to the other principle of “quick and fresh pursuit” … by the constables’.

When Members of Parliament were considering the legislation to establish a judicial/executive division between the magistrates of the metropolis and the Metropolitan Police Force, the Royal Commission Report was available to them. The report told them that, due to the passage of time, Rowan and Mayne’s constables no longer had any power in law to make even preliminary enquiries into reports and allegations of crime beyond those needed for the discharge of their ‘quick and fresh pursuit’ responsibilities.

Elsewhere in their First Report the Royal Commissioners note many similar examples of decay in old system. They used that evidence to justify their conclusion that the means to prevent and detect crime in rural areas had declined to a point beyond local remedy. The only way forward was the adoption of full-time paid constables on the model of the Metropolitan Police Force and their being given power by statute to inquire into reports of crime.

Public prosecutions

The second point made by the Royal Commission and ignored by both the Select Committee on the Police of the Metropolis and the Parliamentary legislators of 1839 was the ‘Constitutional arrangements for public prosecutions’. The Royal Commission reported that,

‘one subject strongly pressed upon our attention has been the necessity of recommending the appointment of public prosecutors. From all parts of the country we have received suggestions of the necessity of providing for the appointments of some officer to prosecute those cases in behalf of the community at large “in which no individual has any special interest, and in which the community has a special interest of its own, superadded to that of individuals”’.

15 ibid. page 116
16 ibid. pages 102 to 107, paras 117 to 125
17 ibid. page 114 at para. 134 et seq
18 ibid. page 94 at para. 114
No such official existed in 1839. Prosecution in criminal cases was the responsibility of the aggrieved party or a common informer. It remained so, with minor exceptions, right up to and beyond 1879 and the first establishment of the office of Director of Public Prosecutions. This unsatisfactory state of affairs thus continued for decades after the 1839 Royal Commission Report despite some later, even more trenchant, comments on the subject from the Royal Commission on the Criminal Law. For example, the Eighth Report of the Criminal Law Royal Commission (1845) says;

'It is obviously of the highest importance to the due administration of criminal justice, that provision should be made for the effectual prosecution of offenders by agents bound and properly qualified to execute the duty. ... The intrusting the conduct of the prosecution to a private individual opens a wide door to bribery, collusion and illegal compromises.'

The direct and obvious remedy for such defects would be to appoint public prosecutors to bring criminal cases before the courts.

The Royal Commission drew attention to the fact that no public authority, including therefore Rowan and Mayne's force, had any responsibility for criminal prosecutions. Under the prompting of Edward Wakefield the 1838 Select Committee on the Police Offices had discussed exactly this problem with Rowan and Mayne who had then rejected an offer of that authority from it. But neither the Metropolitan Police nor the Courts Bill made any provision in 1839 to lay responsibility for the conduct of prosecutions on the Metropolitan Police. Nor did either of the subsequent Acts provide Rowan and Mayne's men with the necessary investigative powers to do so. All the Acts did was to permit, for the first time, Metropolitan Police constables to lay informations before the magistrates if they so chose. But they were given neither the right nor the obligation to do so.

In sum, the Royal Commission of 1839 made available to Parliament a well-researched, authoritative and timely description of the law and the English criminal justice system that ought to have been a significant factor in the drafting and passage of the 1839 Metropolitan Police and Metropolitan Police Courts Acts. The Royal Commissioners established two vital matters that ought to have been recognised and dealt with in the legislation. First, they found that Rowan and

---

Mayne’s men lacked any power to enquire into or investigate reports or allegations of crime and criminal offences. And second, the Royal Commission identified the need for the appointment of public prosecutors as a remedy for the endemic corruption and inefficiency they found in the process of bringing criminal offenders before the courts.

**Consequences**

Ill-drafted, desperately rushed and passed by a tiny minority of ill-informed MPs, the Metropolitan Police and the Metropolitan Police Courts Acts nevertheless mark a watershed in the history of British policing. Together the two Acts aimed to set a new pattern for the prevention, detection, prosecution and control of crime, first in London and then throughout the nation. The new dispensation rested on a principle of separation between judicial and executive functions in the criminal justice system. Parliament adopted that principle in order to clarify the relationship between the magistrates of the metropolis and the Commissioners of the Metropolitan Police. In fact, due to the misunderstandings and confusions created by the proceedings of the 1838 Select Committee on the Police Office the Acts of 1839 fatally undermined the relationship between justices and constables that had gradually emerged from the long development of English common law.

Section 5 of the Courts Act allowed the magistrates to have sworn constables on their staff. However, it confined the jurisdiction of those officers to the precincts of the Court buildings and to the security of the magistrates. Sections 11 and 12 of the Police Act removed any further possibility of ‘prejudicial interference’ in the executive work of the magistrates by directing the Commissioners to ensure that a ‘sufficient number’ of their constables attended on the magistrates ‘for the purpose of executing such Summonses and Warrants as may be directed to them’. The Sections then provided that only constables of the Metropolitan Police could undertake such work in the metropolitan police district. However, the Act does not give Rowan and Mayne’s constables the powers or authority granted to the magistrates’ officers who had formerly carried out this function. Finally in this connection, Section 18 gave exclusive rights to the magistrates of the metropolis as defined in the Act, to issue warrants or summonses for execution in the metropolitan police district.

The Courts Act greatly enhanced the status of the magistrates. Section 3 made seven years’ experience as a practising barrister a pre-condition for appointment to the bench. Section 9 increased their salaries. Section 2 strictly limited their
numbers to a maximum of 27. Other parts of the Act extended the powers of the magistrates. Section 21 gave them power to issue warrants 'on good grounds, stated on oath' thus allowing such documents to be issued on the sworn information of any of the constables of the Metropolitan Police. Other sections of the Act empowered the magistrates to compel the attendance of witnesses; to order the search of premises, etc., and to deal with receivers of stolen property and goods found in their possession. Sections 15 and 16 brought the magistrates of the metropolis firmly under the direction of one of Her Majesty's Principal Secretaries of State (in practice always the Home Secretary). In both the Courts Act (section 55) and the Police Act (sections 74 to 80), the interpretation clauses require that the two Acts be construed together.

Effects of the Acts

Rowan and Mayne no doubt quietly welcomed the Select Committee's determination to remove all their competitors in the metropolis. Most subsequent commentators on this development in the policing of the Metropolis agree that the Commissioners',

'confusion of jurisdiction [with the police offices] was sensibly eliminated in 1839 when the police authority was removed from the magistrates, leaving them only with judicial authority.'

The overall intent of the Metropolitan Courts Act was to confine the magistrates to judicial, rather than executive, functions in the criminal justice system. The Metropolitan Police Act then sought to transfer their executive functions to Rowan and Mayne's Metropolitan Police Force. In this, regrettably, the legislators followed their Select Committee into error. Neither the Courts Act nor the Police Act of 1839 makes the necessary provision to enable the constables of the Metropolitan Police to carry out enquiries into reports of crime. Hence their new right to lay informations before the courts was of little value since they had no authority to inquire into the case. Unless, that is, they did so under the directions of the magistrates in which case Rowan and Mayne took no responsibility for their actions. These facts must have been known to both Commissioners through Rowan's membership of the Royal Commission that discovered them. More importantly, neither Act makes any provision for, recognises or even mentions the specialised criminal-associative and informant-

---

20 Smith, P.T. (1985) page 26
cultivating detective work of the ‘Runners’ which was thus truly ‘discontinued’ without replacement.

**Year of turmoil**

There is no real excuse for this legislative muddle although 1839 was undoubtedly a year of political turmoil as well as economic depression. Melbourne’s weak government offered its resignation over the issue of a constitution for Jamaica, precipitating the ‘Bedchamber crisis’ which momentarily opened the prospect of power to Robert Peel’s Tories. But the excitement should not have distracted Parliament from the importance of the policing Bills, although it may have preoccupied Robert Peel himself at a crucial moment in the history of his creation. In particular, the failure of Parliamentarians to take full advantage of the wealth of excellent information readily available to them on policing issues in the Royal Commission Report during the debate on the Bills is censurable to say the least.

Both the Select Committee and Parliament ignored the important issues raised by the 1839 Royal Commission. Significantly, no proper preliminary or preparatory consideration was given to the extent and importance of the work of the magistrates’ officers in gathering information about, and cultivating informants among, active criminals and their associates before it ceased. That work of the magistrates’ officers, and particularly the ‘Runners’ and their imitators, ended in the capital after 1839 but the need for it did not. Rather it grew with rising crime while the only organisation either available for, or capable of undertaking, any of those vital and troublesome detective duties continued under Commissioners who neither recognised nor accepted that they had either the powers to carry them on, or any obligation to discharge them.
Emergence of the Detectives

Mayne's letter of 1842

Three years later, in 1842, the problem caused by the 'discontinuance' of the magistrates' officers began to come to a head. In July of that year the near revolutionary Chartist movement, which so troubled government with its radical programme of reform and its tendency to use public disorder to further its aims, reached one of its periodic peaks. It presented a 1¼ million signature petition to Parliament in support of its six-point Charter. Against that background Mayne wrote a Memorandum to his Home Secretary, Sir James Graham, dated 14th June, on behalf of himself and his fellow joint Commissioner, Charles Rowan. In it, under pressure from the Home Office, he responds to some quite fierce criticism of the Metropolitan Police Force. However, his subject is not the performance of his Force against the public order threat posed by the Chartists. It is its handling of a sensational murder case.

The offender, Daniel Good, had escaped from the custody of one of the constables of the Metropolitan Police. He then remained at liberty for some two weeks despite his guilt and identity being widely known. Mayne complains that the publicity given to the case had 'assumed to show a want of skill in the Metropolitan Police and a defect of general organisation applicable to detective duties.' In particular Mayne wishes to rebut a painful assertion of the 'greater efficiency of the Bow Street officers' in finding and arresting fleeing offenders, doing so later in his Memorandum by recording that 'The Commissioners cannot find any proof of such assertions.'

He adds that he,

'cannot find that any documents are in existence of the cases of murder or other crimes occurring within the limits now forming the Metropolitan Police District prior to the establishment of the Metropolitan Police, to enable [him] to form any comparison of the total number of cases that occurred, or of the proportion in which the parties were detected.'

---

1 'Memorandum relative to the Detective powers of the police' Public Records Office HO 45/292
2 ibid. page 2
3 ibid. pages 9 to 10
Mayne then makes some other fairly telling defensive points on the case of Daniel Good in this very important document, before reminding his Home Secretary of his understanding of the limitation put on the responsibilities of the Metropolitan Police at its foundation. In so doing he clarifies and confirms his own and Rowan’s view of the proper role and activities of his Force - an issue that the 1838 Select Committee on the Police Offices had misunderstood and which the Acts of 1839 had consequently mishandled. He tells the Home Secretary that,

‘The organisation of the Police was made in the first instance without any direct provision for the performance of such detective duties, as at that time the officers of Bow Street, the Magistrates officers and others, were considered exclusively applicable to this branch of the Police’

He says that when, ‘one or more...[of his constables]...were specially charged with each...case’,

‘This employment of the men, however useful and necessary for the purpose, interfered with the regular routine of duty assigned to each individual in the police; and where the enquiry is prolonged and requires the whole of his time to be devoted to it...considerable inconvenience arises in supplying the place and carrying on the other Police duties of the individuals so employed.’

However, the problem for Mayne’s position on this issue in the year 1842 is transparently obvious. Three years earlier Section 5 of the Metropolitan Police Courts Act of 1839 had ‘discontinued’ the magistrates’ officers without effective replacement. Those were the men, and especially the detective Runners and their imitators, who were best equipped and prepared to seek out a fleeing felon. They did so by applying their knowledge of criminal communities to the task, and by activating the informants they had carefully cultivated in the ‘flash’ houses they ran with the connivance of their employers, the magistrates of the old police offices. These however, were precisely the specialist detective duties that both Rowan and Mayne and the Select Committee of 1833/34 had condemned, and which the Commissioners had rejected as any part of the responsibilities they were prepared to accept, when they had given evidence to the 1838 Police Offices Select Committee. After the demise of the magistrates officers, no-one had

---

4 ibid. page 13
5 ibid. page 14
carried on or taken up that work. In the Good case, it would have been invaluable.

The Commissioners had made some adaptation to their system of crime detection after 1839, but the importance they attached to it can be best seen in their actions. They did not assign any of their constables permanently to such duties. They continued with their tried and tested system of allowing Superintendents of division to employ constables to investigate reports of crime, or to work under the direction of the magistrates, as necessary. But the Commissioners' focus remained, as it always had been, on prevention and on the primacy of uniform patrol and 'quick and fresh pursuit' rather than on the detection and prosecution of unidentified offenders.

The Report of the Select Committee of 1838 had been highly complimentary to Rowan and Mayne and of the methods adopted by their Force. The Commissioners therefore took at its word and were content to rely on regular uniform patrolling as their principal means both to prevent and to detect crime. However, 'When...the detection of criminals also was gradually cast upon the Police' after 1839, the demand for constables to fill the gap opened by the loss of the magistrates officers fell ever more heavily on the Metropolitan Police Force.

The Commissioners careful, and to every appearance grudging, response was to expand the 'route papers' system they had described to the Select Committee. That had always allowed local divisional Superintendents to respond to local demands and the Commissioners began to allow them to employ a few of their constables in plain clothes for limited periods to look into specific or troublesome crimes. But it was unusual for those officers to be in engaged in such work for more than a month at a time. They invariably returned to their 'normal' duties at the end of their spell in detection.

This ad hoc addition to the 'Divisional system' could still be justified in terms of the original purposes of the New Police and had the great presentational advantage of reproducing the precedent of the local control exercised by the magistrates over their officers, without in any way duplicating it. The Commissioners themselves had no direct involvement in the detective work of their officers. Their 'Divisional system' of detectives thus avoided the worst of the criticism that it was a covert introduction of the 'continental' system of government spies into the community. Unavoidably however, this local and

---

*ibid page 14*
informal system of crime investigation and detection had some other, less desirable, characteristics. Not only did it not develop the necessary intimate Force-wide knowledge of criminals and their habits, haunts, weaknesses and strengths, but it also lacked effective co-ordination and the benefits that good communication, shared best-practice, pooled knowledge and accumulated experience, can bring.

The Detective Branch

In 1842 therefore, the Commissioners were in a corner. Their much amended Divisional system was already buckling under the pressure created by such movements as the Chartists and other social manifestations of the effects of industrialisation and urbanisation. And it had failed completely in the case of Daniel Good. So, despite the development being contrary to the purpose of the New Police as he understood it, Mayne reluctantly proposed, on behalf of both Commissioners, to set up a headquarters Detective Branch staffed by constables employed as full-time detectives. His misgivings about that development nevertheless remained serious and well-founded, and are fully and clearly set out in the latter part of his 1842 letter to his Home Secretary.

Having reminded his Home Secretary that his Force had never been given responsibility for the investigation or detection of reports of crime at its foundation in 1829, Mayne draws attention to the fact that the magistrates officers had continued to have that duty right up to the end of 1839. He then moves on to raise perhaps the most potent argument against the permanent employment of his constables in such detective work. In a passage that is as relevant today as it was in 1842 he points out that the employment of his men on such duties would bring the corruption associated with the activities of the old Bow Street officers into the Force. He says;

‘That these [Bow Street] officers had advantages in tracing out some sorts of cases is true:- the Commissioners believe it is well known, that, by at least some of them, a communication was kept up with thieves or their associates, from who occasionally they received information that led to detections, that might not otherwise have taken place. Upon the propriety of returning to such a system, the Commissioners will make no observation, as, in a moral point of view it has been repeatedly denounced. But even upon the consideration of mere pecuniary loss and gain, a balance against the Public would necessarily be the consequence; for such an understanding
between the officers of the Police and criminals in practice, causes the officers to allow a number of cases to remain unnoticed in order that now and then in a case of great notoriety, the parties or their associates whose cases have been connived at on other occasions, may be induced to give the information.

That the thieves will not continue to act on such a system, unless they find it upon the whole for their common advantage, will readily be believed."

Having made that powerful point he then goes on to raise a second important issue. He says that,

'The Commissioners are aware that there is some danger in establishing such a Branch of Police, to whom the duties of a detective character would more immediately belong; of causing a relaxation of the exertions of the Police in general for the same purpose, which have hitherto been successful to so great an extent; - and it may be difficult to define the exact point of time and the exact circumstances under which the advantage of pursuit by the whole body of the Police is to be abandoned;"*

In this passage Mayne raises a second fundamental difficulty created by the formation of a full-time, specialist detective branch within the professional police service, and one which, even now, troubles British chief police officers. He asks when, how and in what circumstances he is to decide when to transfer the investigation of a crime from his uniformed patrolling constables to one of the officers of the specialist detective branch. In asking that question Mayne touches, without actually raising, a wider issue still unresolved to this day. How much time, effort and resources should the police put into an attempt to prevent crime from being committed in the first place or to catch offenders in the act, and how much into the investigation of already reported crimes in order to identify and prosecute the criminals responsible? Mayne has no answer to either his or the wider question in 1842, but says that the Commissioners, 'apprehend that arrangements may be made to prevent such a result', i.e. a diminution in the effectiveness of the New Police in their preventive/immediate pursuit role.

In sum, Mayne's letter tells his Home Secretary that full-time detective work will bring the corruption associated with the old Bow Street Runners into his Force.

---

7 ibid. pages 11 to 12
8 ibid. page 15
9 ibid.
At the same time it will make the management of crime investigation by his officers much more difficult. Nevertheless, as a result of the errors of the 1839 Acts he now has no option other than to propose the he should set up a detective branch at Scotland Yard. It was a proposal that, 'the Commissioners submit for the decision of Sir James Graham, how far it may be desirable as an experiment to try the effect of such a plan.'

Other contemporary sources confirm that Rowan and Mayne's acquiescence in the creation of a body of full-time detectives in their Force was reluctant. Sir Edwin Chadwick, the principal mover of the 1839 Royal Commission which was the precursor of the spread of the New Police idea to the whole nation, is quoted as saying in 1840 that,

'I know from Sir Charles Rowan and Mr. Richard Mayne that they disliked detection on principle and only yielded to its adoption on what they deemed superior authority.'

The first detectives

All through his long career Mayne, in particular, fought hard to retain the character of the Metropolitan Police Force and to preserve its primarily preventive, uniformed patrolling role. But in 1842 the combination of the legislative errors of 1839, the social disruption caused by the Chartists, and the Good incident, defeated him. Under 'superior authority', he and his fellow Commissioner accepted that they should now establish a 'detective branch'. For the first time they would employ two Inspectors and six sergeants permanently in plain clothes for the investigation of crime.

But it is clear from the way in which the new branch was structured and managed that the Commissioners were determined the Scotland Yard detectives should not replicate the now-discontinued magistrates' officers and specialist detective 'Runners'. Nor did they want the detective branch to signal an abandonment of the preventive and protective principles on which their Force was founded. The Commissioners did not give the branch any general responsibility for the investigation of crime reported in the metropolis. That remained at the discretion of local Superintendents under the amended divisional system they controlled. The headquarters detective officers were assigned only to exceptional cases, and solely at the discretion of the Commissioners, or were employed, again with the

10 ibid. page 17
11 Public Record Office IIO 45/7361; Richardson, Sir B. (1887) vol. II page 394
assent of the Commissioners, on enquiries requested by government departments. And the new detectives were not encouraged to cultivate informants amongst the criminal classes, nor were they directed or allowed to associate with criminals for that purpose. Rowan and Mayne’s response to the pressures they were put under in 1842 was essentially minimalist. Unfortunately it was sufficient to cause a significant shift in both the public and the political perception of the role of the New Police.

Samuel March Phillipps, the long serving Under Secretary of State at the Home Department, replied to Mayne's proposals in a letter dated 20th June, 1842. He told the Commissioners that the Home Secretary had agreed to the employment of a small number of full-time detectives. Considering Phillipps’s own fierce opposition to the disbandment of the old police offices and the officers they employed, so forcefully expressed by him to the 1838 Select Committee, this letter no doubt caused him as much trouble as it did the Commissioners. But the Detective Branch of the Metropolitan Police nevertheless then appeared under Inspectors Haynes and Pearce with a strength of six sergeants

Detective Branch expansion

Shortly after he became sole Commissioner for the Force, and we may surmise still grudgingly, Mayne allowed a temporary increase in the strength of the Detective Branch of one Inspector and one Sergeant in 1856. He eventually made those additional appointments permanent in 1864. In the same period, Mayne formalised the occasional employment of uniform police officers in plain clothes to look into particular crimes. In 1862 he gave written authority for divisions to employ, at their discretion and strictly on a non-permanent basis, up to a limit of 200 men in plain clothes at any one time. This expansion completed the final structure of his ‘Divisional’ system of detection.

These are profoundly important developments, both for the emerging police service and for the public it served. Yet no record exists of any form of public debate or discussion of this significant extension to the activities of the police service before its implementation. In particular, no action was taken on the recommendation of the 1839 Royal Commission that constables should be given the power to make ‘inquires’ into reports of crime, and the post of public prosecutor remained unfilled.

12 Smith, P.T. (1985) page 61/2
13 Public Records Office HO 45/OS.292/2
No new Bills to regularise this change in the criminal justice system of the metropolis appeared on the Parliamentary agenda. Nor were any amendments to existing legislation proposed. Parliamentary Papers contain no record of this decision. Graham, the Home Secretary at the time, seems not to have informed his colleagues in government about the first appearance of the Detective branch. His Prime Minister was Sir Robert Peel. Even he does not seem to have noticed or mentioned the event, although he may perhaps be excused. He was at the time deeply embroiled in the political consequences of his post-Reform Act transformation of the Tories into a new Conservative Party. But the fact is that the records of Parliament do not include the emergence of the full-time police detective, and it did not appear as an issue, nor was it debated, in either House. Parliamentary Debates (Hansard) for the months of June and July 1842, when the letters on this subject were passing between Mayne and his Home Secretary, contain no reference to those highly significant events in the history of British policing.

On an issue which a dozen years earlier had aroused ferocious debate both in the House and in the press, and only three years previously had outraged both Houses of Parliament, no public discussion followed the first tentative manifestation of that 'despotic police of the continental states, with all the detestable details of espionage and domestic interference' that had earlier so exercised the fears of Englishmen for their freedom. The Government minister responsible for the development did not even mention it in Parliament, nor did he publish it or otherwise expose it to public comment or debate.

Postscript - alternate interpretations

It must be said that this interpretation of these events will not be found in extant histories of, or commentary on, British policing. It is, despite the quantity and strength of the evidence available to support it, unprecedented in the literature on the emergence of the full-time professional detective in the British police.

Charles Reith, the respected and already quoted author on the history of the British police service, is no counter-example. At the end of Chapter XIII of his 'A New Study of Police History' published in 1956, he turns to the 'baffling problem' of the emergence of the British police detective. He begins by reproducing the quotation mentioned earlier in which Edwin Chadwick claimed

---

14 Eastwood, David (1992)
15 Parliamentary Debates (Hansard) Third Series vols. LXIII and LXIV
16 Reith, C. (1956) page 221
that Rowan and Mayne 'disliked detection on principle' and that they 'only yielded to its adoption' on 'superior authority', before going on to say:

'It is very difficult to imagine anyone forcing Rowan and Mayne to yield, against their judgement and principles, in a matter of this kind, and if they did yield, it could have been only to dictates from the Home Office, backed possibly by the Cabinet. On the other hand, the fact that Rowan and Mayne strongly disliked detection in comparison with prevention is clearly seen in the wording of earlier police documents, and they had very good reason for their views.'"

He quotes liberally from those 'earlier police documents' to establish his point before making an attempt to explain the disparity between the strong contrary views of the Commissioners and their actions in setting up the Detective Branch. His argument puts the blame firmly in 'the hands of Home Office officials...[by whom the]...policing principle...[of prevention was]...confused with function.' According to this view, by conflating 'principles' with 'functions' Home Office officials introduced detection into the stated activities of the professional police service and, indeed, persuaded or cajoled the Commissioners into founding the Detective Branch.

Clearly, Reith's argument depends upon establishing a distinction between the 'principles' followed by the New Police and the actual 'functions' they performed. This device enables him to describe the emergence of the Detective Branch as merely a shift in emphasis among the various 'functions' of the police rather than a departure from the preventive 'principle' on which the whole organisation was based. Some support for that interpretation of Reith's views on these matters is given by considering his later remark that:

'Detection is a function of police, and a necessary one, but, together with all other police functions for the control of crime and disorder, it must be constantly co-ordinated in service to the principle of prevention, and in no circumstances be allowed, as a function, to supersede it.'"  

However, no evidence is presented to support this conjecture. Indeed Reith's discussion of these issues effectively ends with that comment.

It is greatly to Reith's credit that he is both aware of the disparity between the apparent views of the Commissioners and their action in first creating the

---

17 ibid, page 222
18 ibid, pages 223-224
Detective Branch, and that his command of the literature and sources leads him to recognise a need to suggest an explanation for it. And his identification of the Home Office and its officials as prime suspects in the matter is well-judged, as will be later shown, if not for the reasons he gives. The weakness of his explanation is however, two-fold. First, he does not apply to his problem the concept of detection as it was understood by the Commissioners at the time. Second and more importantly, his explanation depends on both the prevention and the detection of crime being functions of the British professional police service at its first foundation.

As to the first point, Reith does not give due weight to the unique views of the Commissioners on issues of prevention and detection in crime, set out in their evidence to the 1833/34 Select Committee on the Police of the Metropolis. Put simply they saw no distinction between prevention and detection in the operations of a street police, and regarded their single function as being more than adequately served by their patrolling constables. And on the second point, contemporary sources establish that the provisions of the founding statute of the New Police specifically exclude the Commissioners from any involvement in what the modern observer would describe as criminal investigation and detection, and the public record shows that they fought very hard to remain so. Equally, Under Secretary Phillipps’ evidence to the 1838 Police Offices Select Committee shows that, at the relevant time, there was no unanimity or enthusiasm inside the Home Office for the creation of a detective branch to carry out those functions within the Metropolitan Police in 1842. Indeed, as will be shown, there is clear evidence the Home Office were fully aware that such detective work was not and was never intended to be among the functions of the New Police. Hence Reith’s conjecture of a distinction between ‘principles’ and ‘functions’ in policing within the Home Office as an explanation of the emergence of the full-time professional detective in the British police service, while useful and interesting, is not consistent with the evidence presented here.

By comparison with Reith other authors are far less aware of the problem. Clive Emsley, who takes a more sociological view of the history of policing says in his ‘The English Police: A political and social history’, ‘It was, after all, Mayne who in June 1842 persuaded the then Home Secretary, Sir James Graham, to authorise
the appointment of two inspectors and six sergeants for detective work', quoting as his source Smith, P. T. (1985).

Smith however, after describing instances of the operation of the Commissioners' "Divisional system" of detection, merely says:

"Few details are known about the founding of the Scotland Yard detectives except for a letter from Mayne to the Home Office recommending that two inspectors and six sergeants be selected for "their abilities and general qualifications for those peculiar duties". The new band of detectives, freed from jurisdictional restraints, investigated crimes of a more serious nature. They were sometimes despatched to other parts of the country or even abroad."

Although Smith sees no reason to give the appearance of the detectives any special thought, he accurately reports that:

"At first there was no full-time force of men trained specifically for detection because there seemed no obvious need for such...It was after 1839 with the abolition of the Runners...that the need for detectives was felt."

He seems therefore to take something of Reith's position, i.e. the assumption that all aspects of the detection and prevention of crime were functions of the New Police ab initio, without sharing Reith's recognition of the need for an explanation of any of the Commissioners' behaviour or decisions in setting up the Detective Branch.

It may be that Emsley's view is also coloured by that of other authors in the field. Douglas Browne for instance, in his otherwise magisterial 'The Rise of Scotland Yard' (1956) writes that following the Good incident and another notorious case;

"It is known that within a fortnight, their deliberations hastened by this series of events, the Commissioners had decided to press for the immediate establishment of a separate Detective Department at Scotland Yard. A Memorandum relative to the Detective Powers of the Police ... was forwarded to the Home Office on June the 14th."

Browne claims that;

---

20 Smith, P.T. (1985) page 62
21 ibid
22 Browne, D.G. (1956) page 120
'the Commissioners' Memorandum...has disappeared, but it seems that
they asked for the appointment of two inspectors and eight sergeants to the
new Detective Branch.'

Indeed, in defence of both Emsley and Browne, the idea that the Commissioners,
and particularly Richard Mayne, were advocates and instigators of the emergence
of the detectives is widespread in the literature on British policing. Historians and
commentators as diverse as Moylan (1946), Cobb (1957), Ascoli (1979) and
Petrow (1994) take that line on the provenance of the detectives. Cobb in
particular develops the hypothesis into a full-blown, long-term conspiracy by
Mayne to overcome the opposition of the Home Office and the reluctance of
Rowan to introduce detectives into policing. The penultimate paragraph of his
chapter on 'The Detective Department' says;

'Thus did the Detective Department of the Metropolitan Police come into
being. Its creation – though very sudden and sharp at the end...had been a
long, slow and gradual process guided by the undeviating determination of
Richard Mayne.'

His conclusion is however, reached by reasoning that, on the evidence available in
the public record, is inconsistent with Mayne's views on this issue.

It is difficult now to be certain how this strand of thinking on the origins of the
detectives began but some suspicion must be attached to Sir John Moylan. He is
among the earliest of modern authors on policing and his credentials as an
authoritative source can hardly be questioned. His position as Receiver for the
Metropolitan Police bridges whatever gap there might be between the Home
Office and professional policing. His post in the Metropolitan Police was, until
recent times, equal to that of the Commissioner, and even now is regarded as
second in the command structure while being at the same time to some extent
outside it. Moylan's last position at the Home Office was equally at the pinnacle
of that hierarchy. So who should doubt him when he asserts that;

'In 1842...the Commissioners...persuaded a reluctant Home Secretary, Sir
James Graham, to sanction, as a cautious experiment, the formation of a
small detective branch'.
Coupled with the fact that Mayne, as a lawyer, carried on such correspondence on crime as the Commissioners were called upon to deal with, and that he alone signed the 'Memorandum relative to the detective powers of the police' (for which an explanation can be given arising from a significant, but at the time undiscovered, drafting error in the Metropolitan Police Act of 1839), an assumption that Mayne in some way prompted or fostered the emergence of the professional detective may be understandable. However, it is not ultimately defensible or compatible with the available evidence.

On the other side it might well be argued that the contrary now needs an explanation. If Sir John is so well placed to know the truth about these matters, why should he lie or dissemble? That question, which connects with the issue of the role of the Home Office and its officials in these matters, will be addressed in a later chapter, when the relative contribution of the Home Office and the Commissioners of the Metropolitan Police to the appearance of the professional police detective is examined and assessed. For the present purpose it is enough to say that all Home Office officials can be shown to have a strong and continuing motive to minimise the extent of their involvement in the creation of a Detective Branch within the Metropolitan Police, and to emphasise that of the Commissioners.

Finally, I could not leave this discussion of the myth of Mayne and the Commissioners as the progenitor(s) of the professional detective without mentioning F. E. Heron, a regular contributor to the magazine of the Metropolitan Police Training School at Hendon in London. Writing on the origins of detectives for the benefit of the staff and students at that Training School he said:

'The Commissioners had wanted for some time to have a body of men specially trained to investigate the more serious crimes...and in 1842 they managed to persuade the Home Secretary to approve such a section.'

Others far well less acquainted with, or concerned about, the history of policing than Heron can hardly be blamed for mirroring his error.

Other writers, such as Brogden (1982), Bayley (1981), Critchley (1967), and Prothero (1931) are, in their various ways, useful and valuable contributors to the literature on the history of British policing. But they are also among those who, like Smith (1985), take the function of crime detection by the police for granted.

27 Heron, F.E. (date u/k) page 18
and therefore see no need to give any special attention to, or explanation for, the emergence of a full-time Detective Branch.

Among such writers are some however, who deserve special mention. The category includes at least two, Stead (1985) and Tobias (1970), who were active academic members of the staff at the National Police College (as it was then known) at the time of their writing. Given that such well-placed experts in the history and business of policing are content that the appearance and presence of a large and constantly growing body of full-time detectives within the professional police service needs no special explanation or discussion, it is hardly surprising that the wider body of academics and commentators interested in the subject have tended to take the same view. That lacuna in the study of the development of the British police service will, I hope, now begin to be filled.

Conclusion

This last part of this chapter presents alternate views on the process by which criminal investigation and detection became accepted as a full-time function for British professional police officers. My interpretation has been given together with its sources so that the whole of the material on which it is based is readily available for critical inspection. It is now for the reader to judge which of the many available explanations for the first emergence of the British professional police detective is to be preferred.

What is truly surprising about alternative accounts of the origins and development of the modern detective however, is the lack of any real appreciation of the significance of the reports of the two Home Office departmental committees examined in the next chapters. As will be shown, neither the presence of detectives in, nor their impact on, British professional policing can be properly understood or assessed without reference to them.
Fergusson and the Detective Branch

Mayne as sole Commissioner

Charles Rowan retired, honoured and deeply respected, on grounds of ill-health at the beginning of 1850. After an uncomfortable period with his undistinguished successor, Captain Hay, who died in office in 1855, the founding 1829 Act was amended to allow Richard Mayne to become sole Commissioner on 20th August that year. The Detective Branch of the Metropolitan Police grew very little under Mayne. Only in 1867, twenty-five years after its inception, did the small seed planted in 1842 end its long gestation and begin to grow.

In that year Mayne, as sole Commissioner, found himself again under heavy pressure from the Home Office. Two problems fuelled public and political unrest about the work of his Force. First, the long running agitation associated with the demand for electoral reform, a campaign that culminated in the passage of the second Reform Act that year. Second, the disruption and outright terrorism associated with the activities of Fenians and other Irish insurgents. Of the two, Fenianism had the larger impact.

'The Times' of London first mentions the ‘Fenians’ in March 1864. For the next couple of years they are the subject of comment as causing trouble in Ireland, the USA and Canada. In early 1866 there are reports of them being responsible for disturbances in Bradford.¹ They are first mentioned in Parliament in June that year.² By March 1867 'The Times' reported fears of a Fenian rising in Liverpool.³ Public disquiet came to a head on 18th September, 1867 when Police Sergeant Brett was murdered during an attempt to rescue Fenian prisoners in Manchester.

The Queen’s Speech to the new session of Parliament that year included a condemnation of Fenianism. She said;

‘I rely for [its] effectual suppression upon the firm administration of the law and the loyalty of the great mass of my subjects.’

In a ‘Humble Address to Her Majesty’ read to the House of Commons the next day (20th November 1867) Mr. Pryce said;

¹ ibid. 3 April, 1866 page 4 col. 4
² ibid. 2 June 1866 page 6 col. 4
³ ibid. 15 March 1867 page 10 col. 6
'We assure Your Majesty of the deep regret with which we learn that the treasonable conspiracy commonly known as Fenianism, baffled and repressed in Ireland, has assumed in England the form of organised violence and assassination.

We beg to convey to Your Majesty our participation in the opinion which Your Majesty expresses that such outrages require to be rigorously put down, and to express our confidence that Your Majesty may rightly rely, for their effectual suppression, upon the firm Administration of the law and the loyalty of the great mass of Your majesty's subjects.'

In an editorial dealing with the debate on the Queen's Speech, 'The Times' heartily endorses the Sovereign's plea for firmness in the face of insurgency. In the same article it reports an incident in which Gathorne Hardy (later, Earl Cranbrook), the Home Secretary, was 'bearded in his office' on 18th November. A group of protesters, on behalf of the three Fenians condemned to death in Manchester for the murder of Sergeant Brett, sought an audience with the Home Secretary. He refused to meet them. They then invaded his office to put their plea personally for a commutation of the death sentences. Such Jacobite behaviour, said 'The Times', made all too clear the need for the firm action promised in the Queen's address to Parliament.

Three weeks later, on 13th December, a Fenian bomb killed 12 people and injured 126 others in a botched attempt to rescue two of their members from Clerkenwell Prison. That incident, coming so soon after the failure of the Metropolitan Police to protect him from the mob even in his own office, convinced Hardy that the Metropolitan Police was neither able to protect Londoners from the danger and damage caused by domestic and Irish insurgency, nor capable of dealing with the conspiracies underpinning such movements. With public and political pressure intensifying he determined to resolve both problems. The first was relatively easily addressed by a decision to review the strength, structure and organisation of the Force. But the second presented more complex difficulties.

Mayne's opposition

Agitation for electoral reform and Fenian insurgency were both driven by groups of hard-core activists. They differed in their degree of willingness to break the law or to use violence to achieve their objectives. But both movements depended

---

4 Journals of the House of Commons vol. 123 page 6
5 'The Times' 20th November 1867, page 6 col. 1
for their success on tight-knit secrecy among the leadership. Mayne’s policing methods, his focus on preventable crime and his insistence that his men should never ‘take on the guise of spies’, were incapable of dealing with such movements. The solution to the problem is to be found in what Mayne had described as ‘duties of a detective character...[which]...in a moral point of view...[had]...been repeatedly denounced’, such as those developed and practised by the Bow Street Runners and the other magistrates’ officers. Skill in information-gathering and informant-cultivating is required for success in dealing with all forms of criminal conspiracies, including insurgency from whatever source. But Mayne’s opposition to any proposal to impose the ‘detective duties’ of the magistrates’ officers on his Force was predicable, well-known and immovable. Indeed, on the evidence he and Rowan had given to the 1837/38 Select Committee on the Police Offices he would be likely to view the conspiracies of reformers and Fenians as non-preventable if not political, and thus of no direct concern to his ‘street police’.

Understandably, Secretary of State Hardy ‘found Mayne’s views on detection “quite inapplicable to the times and the circumstances.”’ He may even have been aware of the legislative difficulty in expanding or extending the work of the detective branch of the Metropolitan Police that had been raised with his predecessors, first by the 1839 Royal Commission, and later by Mayne himself in his 1842 letter. Hardy must surely also have anticipated that any attempt to create a plain clothes detective unit within the Metropolitan Police Force capable of dealing with conspiracies would not only meet implacable objection from his Commissioner, but might, despite the Fenian outrages, arouse all the old political fears of despotism that had accompanied Peel’s original efforts to found the New Police. Yet to combat domestic or Irish insurgency on the English mainland, that is what Hardy needed; a body of plain clothes detectives capable of coping with ‘treasonable conspiracies’.

It would be wrong however, to assume that the reformers and Fenians were the source of, or even the main element in, pressure on Mayne to increase or expand his detective branch. Simple growth in crime and disorder had a major impact on the New Police. Well before the events of 1867 Mayne had responded to the increasing workload falling on his small group of headquarters detectives. He had appointed a Chief Inspector to have overall command on the Detective Branch and increased its strength by four Sergeants. He later added a Clerk

---

6 Emsley, C (1991) page 72
Sergeant to deal with its growing administrative burdens, thereby almost doubling the size of the unit. But even at this size, its maximum under Mayne, the full time Detective Branch still comprised only 16 officers out of the more than 8,000 strength of his Force. ‘Quick and fresh pursuit’ and local crime investigation remained at the discretion of local Superintendents, employing their own officers as part-time ‘divisional detectives’ for that purpose. Mayne’s expansion fell a very long way short of meeting Hardy’s need, but it was as far as he was likely to go. And his standing with the press, public and politicians as the sole remaining founder of the Force protected him from being bullied or ignored on this issue.

After struggling with the problem for some two months Hardy found a way round it. He decided to appoint Sir James Fergusson, MP, a stalwart member of his Parliamentary team, to head an enquiry into the structure and organisation of Metropolitan Police. He presented the move as a preliminary to an expansion of the Force by one thousand men but made no mention of any intent to solve the problem of criminal conspiracies. Significantly, he did not seek a publicly accountable body such as a Parliamentary Select Committee, still less a Royal Commission, to carry out the work. He might well have done. The importance of this increase in the size of the Force and public interest in the effectiveness of government in dealing with agitation for reform and the Fenian threat certainly justified that level of inquiry. Instead he made the enquiry an internal or Departmental committee working directly under his control, and reporting to him rather than to Parliament. If Hardy’s purpose in adopting that form of enquiry was to ensure that his plans for a counter-insurgency capacity within the Force could be concealed from public scrutiny it was well-judged.

On 8th February 1868 Hardy issued an ‘order of reference’ to the inquiry.

‘I think it desirable at a time when the police force is being so largely increased, to enquire into its condition, its government in its several divisions, the duties discharged by the Assistant Commissioners, and how far their time is occupied in clerical work, the advisability of appointing persons of higher position and education as officers between the Superintendents and the Assistant Commissioners and Chief Commissioner.’

---

8 ibid (top)
The 'order of reference' says nothing whatsoever about the need to form or expand a specialist detective branch, nor does it mention the problem of the conspiracies behind the public disorder and the Fenians outrages. Indeed, it makes no specific reference to the organisation of crime investigation and detection at all.

The Fergusson Report

Besides Sir James Fergusson, MP as Chairman, members of the committee were Mr. Henry Thring and Mr. George Everest. The Departmental Committee completed its work in three months, delivering its Report to Hardy on 8th. May 1868. After paying tribute to 'the great public services that have been rendered by the Commissioner during a period of service extending over 39 years, and frequently in circumstances of great anxiety and difficulty', the Report began with the main issue on the Committee's publicly announced agenda.

Despite its expressed admiration for (now Sir) Richard Mayne and his contribution to the development of the Metropolitan Police, the Committee said that it was, 'however, of opinion that a system adapted only to the government of 3,000 men may well be found to be defective when applied to the government of 8,000 men', and that such a system could not cope with 'the evils that arise from the great extension of the Metropolitan Police force in numbers, and the Metropolitan Police District in area, without a corresponding change in the organisation of the force, especially in reference to the number of superior officers.' Again, the Committee does not mention the evils occasioned by the activities of Fenians or other agitators and insurgents. Nor does it criticise the arrangements made by the Metropolitan Police for the investigation of crime.

The Committee is however, highly critical of the organisation of the Force and particularly its apparent failure to adapt to the rapid social changes in which it had become a significant factor. There are signs that the sharpness of this critique deeply disturbed Richard Mayne. He must have felt particular pain in reading the conclusion that:

'"the management of the police is extremely centralised, nothing of importance being done except under the direction of the commissioner or assistant commissioner."'

9 ibid. page 16
10 ibid. page 16
11 ibid. page 12
and that,

"We think it impossible that, with so limited a number of superior officers who are engaged in considering minute details of discipline and of general management, there can be sufficient contact and acquaintance between officers and men to secure confidence or proper supervision, and the inquiries we have made have justified us in our conclusion in this respect."

To solve that problem the Committee recommended, among many other things, that the Metropolitan Police area be divided into four police ‘Districts’. Each District would comprise of a number of parishes to be commanded by an ‘Assistant who would be charged with the whole responsibility of protecting his District...In short, the police district would form in some respects, for police purposes, almost a separate town."

Students of police history will recognise the proposal. It is almost exactly, after many experiments and variations, the structure adopted by the Metropolitan Police Service today. The bulk of the remainder of the Report deals with a range of administrative, recruiting, disciplinary, financial and even educational matters arising from a decision greatly to increase its strength.

Fergusson and the detectives

Having thus dealt with the public part of Hardy’s plan, the Committee turned to his second, undisclosed, problem. It devoted the last six paragraphs of its ‘General Account’ to the ‘Detective Force’ and two paragraphs of its ‘Recommendations’ to the same subject. Despite there being nothing in their publicly announced instructions from the Secretary of State to authorise it, and without adducing any substantial argument or evidence to justify it, the Committee produced a two-pronged recommendation. that:

‘The detective police, having regard to their number, appear to the Committee to be very efficient for the detection of ordinary crime, but their numbers are wholly inadequate to the present requirements of the metropolis,...[and]...their constitution scarcely adapts them to cope with conspiracies and secret combinations.’

Accordingly the Committee baldly state that:

12 ibid. page 17
13 ibid.
"the detective police should form a separate division under the control of a special superintendent and under the immediate command of the head of police."\textsuperscript{14}

The Committee was not content with overturning the clear wording of the original Act of 1829 on the definition of the functions and purposes of the New Police. It decided to contradict the one and only General Order ever issued by Robert Peel, the political progenitor of the Metropolitan Police. It recommended that,

"The officer in command of the detective force should have the power to recommend men for his division, whether or not they have filled the office of constable."\textsuperscript{15}

By thus introducing the idea of men being recruited directly into the plain clothes branch of the Metropolitan Police without having first served a period in uniformed preventive patrol, the Committee contravenes Peel's dictum of 10th December 1829 that;

"no person shall be qualified to fill a superior station unless he shall have served a given time in a subordinate station"\textsuperscript{16}

All this was anathema to Richard Mayne. The Committee's recommendations ignore all the reservations about the employment of detectives he had voiced in 1842. To have his opinions on that issue rejected in a report that also reflected badly on his stewardship of the Force, must have been particularly galling. But neither his evidence (if he appeared before it) nor any other comments he made to the Committee have been discovered. Neither the copy of the Committee's Report in the Public Record Office nor that currently held in the Metropolitan Police Service Library includes a record of the evidence it heard.

\textbf{Significance of Fergusson}

Two important points ought to be raised on this latter 'detective' part of Fergusson's Report. First, before reaching its conclusions and recommendations about the 'Detective Force' of the Metropolitan Police the Committee clearly knew that there was no legislative authority for its existence. Second, its terms of reference gave it no remit even to consider the criminal investigative activities of the Force.

\textsuperscript{14} ibid. pages 21 - 22
\textsuperscript{15} ibid
\textsuperscript{16} Parliamentary Papers (1830) vol. XXII page 408
On the first point, in its Preliminary, General Account of the Force, opposite the side-heading ‘Duties of police’, the Committee describes and confirms the role and responsibilities of the Metropolitan Police Force in this period. The Committee says;

‘The ordinary duties of the police force consist in patrolling the streets and preventing crime; their extraordinary or special duty is in acting in masses for the purpose of quelling riots or insurrections, and keeping order on the occasion of state processions, state parties, and other public occasions.

A subordinate, but not unimportant, part of their duty as connected with the preservation of the public peace is attending at Police Courts and giving evidence against offenders.”

No mention of any kind of ‘detective duties’ in made in this section, and the involvement of Metropolitan Police constables in the detection and prosecution of criminal offenders is shown as arising directly from their peacekeeping duties and as being confined to them giving evidence as witnesses. The Committee then reports that ‘Other distinct branches of duty are attached to the police force by Act of Parliament, as for example,’ - giving a list of other such duties required of the police force – before pointing out that, ‘These duties form a separate branch, having little in common with the ordinary duties of the police.” Again there is no mention in the Report at this point of the Detective branch among the list of ‘distinct branches’ of the Force.

Clearly the Committee had found no Parliamentary authority for the employment of constables on ‘detective duties’ under any legislation, otherwise it would have been mentioned at this point in the Report. By default therefore, the Committee’s finding must be that not even Mayne’s strictly limited employment of men in plain clothes in a Detective Branch engaged solely on the investigation of exceptional cases of crime, or on government enquiries, was authorised by statute. The Committee does not even note the 1842 agreement between Mayne and his Secretary of State Bruce to ‘experiment’ with a Detective branch.

The Committee deal with the detective aspect of the activities of the Force under the entirely separate heading of the ‘Detective Force’. It gives a fairly good account of Richard Mayne’s Divisional based system of crime investigation, saying,

17 Report of the Departmental Committee, etc (1868), op. cit. page 10
18 ibid page 11
'the superintendents of every division are allowed to employ a certain number of constables in plain clothes to make enquiries and hunt up offenders.

These plain clothes men receive the same pay as ordinary policemen, and are not employed continuously in plain clothes, but are changed from time to time.'

The Committee failed to recognise the strictly limited remit of these locally employed detectives but confirmed Richard Mayne's assertion in his 1842 letter that, 'The organisation of the Police was made in the first instance without any direct provision for the performance of ... detective duties.' The Committee endorse his view, reporting that, 'In the original constitution of the police no provision was made for the establishment of such a force.' It also echoes the view of the 1822 and 1833/34 Select Committees by adding that, 'The English jealousy of any police force at all would not hear of anything approaching to what was called the "spy system"' Equally, the Committee make no mention at this point of any statute authorising or empowering the constables of the Metropolitan Police to make inquiries into reports of crime or other offences, such as were granted by the magistrates to their 'discontinued' officers and as was recommended by the Royal Commission of 1839. This surely, would be the place for any such finding. The Committee merely accept that what it called 'Obvious necessity' had led to a gradual increase in the level of crime investigation activity undertaken by Metropolitan Police constables.

The Departmental Committee does not explore the nature or extent of that 'obvious necessity', though had it discovered Mayne's 1842 Memorandum it may have identified its cause. In his Memorandum Mayne had pointed out to his Home Secretary that his 'divisional system' had emerged, 'When [after the Acts of 1839] the entire responsibility of the detection of criminals was gradually cast upon the police.' Fergusson's Committee simply reports the establishment of the 16 person, full-time detective force they found in Mayne's reluctantly introduced permanent detective ranch without further amplification or explanation.

---

19 ibid. page 15
20 ibid. page 14
21 ibid. pages 14-15
22 ibid. page 15
23 Memorandum relative to the Detective powers of police' (1842) Public Records Office HO 45/292
24 Report of the Departmental Committee, etc (1868), op cit. ibid.
Neither its findings nor its lack of them troubled the Committee. Nor was it in any other way deflected from its intent to increase and expand the detective work of the police. The Committee pressed on to recommend the establishment of a centralised, full-time detective force within the Metropolitan Police 'under the control of a special superintendent and under the immediate command of the head of police.'

The second important point about this Report is familiar but bears repetition. The Committee’s order of reference from the Secretary of State gave it no authority to consider the organisation of crime investigation in the Metropolitan Police Force. Mr. Secretary Hardy’s publicly announced order to the Committee mentions only his wish for information about the structure and organisation of the Force at a time when he proposed greatly to enlarge it. He gave Sir James Fergusson and his colleagues no public remit to review its employment of detectives. Even when answering a Parliamentary question shortly after the appointment of the Committee, Hardy gave no hint of the possibility of a reorganisation of the detective work of the Metropolitan Police. In fact, he does not mention the enquiry then being conducted by Sir James Fergusson at all.

On that occasion, in answer to what would probably be instantly recognised by modern Parliamentarians as a 'planted' question from Viscount Enfield about plans to increase the size of the Metropolitan Police Force, Hardy says;

'I have to state that I discovered last November that the police had an amount of work cast upon them which prevented their obtaining what I consider essential rest in order to do their work efficiently. In consequence I authorised an addition of a thousand constables to be made to the force.'

Yet despite this answer in Parliament, the Committee Hardy appointed to report on the consequences of the increase in the strength of the Force devotes considerable energy to radical recommendations about the system for the employment of full-time detectives. It could not so far depart from its ostensible remit without the encouragement, or at least the connivance, of its sponsor. The suspicion must be therefore, that the creation of a large full-time detective force was always part of the Committee’s purpose. Furthermore, its internal Departmental format ensured that that aspect of its work could be concealed from both Parliament and the public. And so it proved.

25 ibid. pages 21/22
26 'The Times' 22 February 1868 page 6 col. 1
At the cost of belittling Mayne’s great achievements, and no doubt swept along by the political aftermath of the Brett murder and the Clerkenwell bombing, the Committee put forward proposals for a far-reaching centralisation and expansion of the detective activities of his Force. The recommendations suited their sponsor’s ends perfectly. Hardy and the Home Office not only had a much strengthened and better organised Force in London but they also had their counter-insurgency unit.

In a final flourish, which is of some significance in the history of the professional police detective, the Committee even went to the trouble of offering a revolutionary remedy for any legislative or regulatory difficulties lying in the path of their proposals as well as for Mayne’s opposition. In a long forgotten, eventually ignored, but significant recommendation the Committee, ‘propose that, as soon as practicable the police force should be placed by Act of Parliament absolutely under the control of the Secretary of State’ thus once more fundamentally contradicting the intention of the legislators of the original Act that had founded the Metropolitan Police. 27

Aftermath

There can be little doubt that Richard Mayne found the outcome of Sir James Fergusson’s inquiry totally unacceptable. His views on policing are incompatible with both its conclusions and its recommendations. Its criticisms of his personal conduct of affairs must have caused him great pain. Whether the resultant stress was a factor in his untimely death shortly after the publication of the Committee’s Report is impossible to determine. It would be remarkable if he did not feel subject to unfair attack toward the end of his life.

But his loss, the coincident replacement of Secretary Hardy by a new man, Henry Bruce, in the same month, coupled with continuing public disquiet over the Fenian threat, probably explains why Sir James Fergusson’s Report does not occupy the place it ought in the history of the development of the modern British police service. In the circumstances it would, perhaps, have been felt insensitive to draw too much attention to a document so critical of Richard Mayne and his conduct of his office. More probably, the Home Office might not have wished to advertise either its plans to counter Fenianism, or the Committee’s radical recommendations about the future structure of the Metropolitan Police Force.

27 Report of the Departmental Committee, etc (1868), op cit. page 17
In any event, and in a pattern that was to become familiar, the Home Office did not publish Fergusson’s report, or release it to Parliament for scrutiny by MP’s.

Mr. Harvey Lewis MP put a Question in the House to the Home Secretary on 8th June 1868 about this Home Office Committee Report. He asked if the Secretary of State would lay a copy of it ‘upon the Table of the House’ for the information of MPs. Hardy declined to do so, saying ‘for the reason that the witnesses were informed that their evidence would not be made public.’

By taking that stance, Hardy departed the Parliamentary view of the founder of the Metropolitan Police Force, Robert Peel, on these issues. When faced, on 28th May 1830, with a similar question in the House about those employed in the Force, Peel said;

‘All the orders which have been issued, both general as well as secret ... I should be most willing to lay on the Table of the House. There is no sort of information connected with the Police that I am not ready to give....I am convinced that the efficiency of the Police would be increased in proportion as it is exposed to the scrutiny of the House.’

But then Peel’s New Police did not, at that stage, include a detective department. Nor did he have any plans to create one.

Mayne’s death also explains why the detective proposals of Fergusson’s 1868 Committee were not subject to the informed and committed public opposition they merited. The death of Mayne, Hardy’s concealment, and his replacement by a new Secretary of State, overshadowed the Report. But those circumstances did not dilute or delay its implementation. In the untimely and unexpected absence of Mayne, and after the departure of the Hardy from the Home Office, the new Commissioner, Lt. Colonel Edmund Henderson, carried into effect much of Fergusson’s recommendations for the detective branch of the Metropolitan Police. More significantly, the spirit of the Committee’s work lived on to have a revolutionary influence on the development of the professional police service. Yet the constables of the Metropolitan Police Force still lacked any statutory power or authority for their involvement in the investigation and detection of crime, other, that is, than when they acted under the control and directions of one of the magistrates of the metropolis.

28 Parliamentary Debates (Hansard) vol. CXCI col.1222
29 ibid. New Series vol. XXIV cols. 1200 and 1201
Ibbetson and the Criminal Investigation Department

Sir Richard Mayne died, in post but at home, on Boxing Day, 1868. He could not have chosen a more unfortunate moment. Mayne had had sole command of the Force for 13 years following the retirement of Charles Rowan (also 'Sir') on 3rd January 1850, and the death of Rowan’s successor, Captain Hay, in 1855. Mayne’s loss came at the end of the year in which Gladstone first mobilised the new electorate produced by the Reform Act of the previous year to lead the Liberals into power with a comfortable majority. The new administration embarked on a vigorous programme of change. Its Home Secretary, Henry Austin Bruce, played his full part. A test of his fitness for high office came almost immediately. Seventeen days after his appointment, he heard of Mayne’s sudden passing.

Just when continuity was vital, Mayne’s death removed the last link with the founders of British professional policing. Peel himself resigned from the Commons in 1846 and died after a fall from his horse on Constitution Hill in 1850. Samuel March Phillipps, the Home Office mandarin who saw the Force through its formative years, departed on pension in April 1848, and Rowan had passed on in 1852, a mere two years into his retirement. Even the original Receiver of the Metropolitan Police, John Wray, a powerful and independent post in the organisation, went in 1860. None of the original ‘top team’ remained to protect the founding traditions of the Metropolitan Police. The new Home Secretary faced an immediate crisis with no precedent, procedure or experienced guide to help him.

His solution was to make the only ever Acting appointment to the Commissionership in the history of the Force. After a four day interregnum Bruce asked the senior of the two Assistant Commissioners, Colonel D.W.P. Labalmondiere, to be Acting Commissioner. He then embarked on a search for a permanent successor to Richard Mayne.

It proved difficult to find someone not only able but willing to step into Richard Mayne’s shoes. Eventually Bruce settled on a man already within his Department, Lt. Col. Edmund Henderson, the Surveyor-General of Prisons since 1863. Henderson, a soldier by training and a Royal Engineer by profession, had risen to prominence in government service in the Convict Department. He had
made a good impression as Superintendent of the last British penal colony in Western Australia, and subsequently in the top prison job within the Home Department itself.

The Home Office had every reason to hope that the arrival of Henderson in the Commissioner's office would ease the implementation of the recommendations of Fergusson's Committee. That is probably a sufficient explanation for his selection, although the official record throws little light on what process, if any, led to him being offered the post. His long background in the prison service certainly contained nothing to prepare him for the protective and peacekeeping responsibilities of his new command. If anything it seemed likely to bias him against prevention in matters of crime and toward detection, prosecution and punishment. If that was indeed the reason for his appointment those who chose him were destined to be disappointed.

Implementation of the Fergusson Report

Henderson found Mayne's small headquarters detective branch already in existence on his arrival in the Commissioner's office on 13th February 1869. As a result of his predecessor's reluctant acquiescence to the promptings of his Secretary of State in 1842 the branch now had a respectable tradition behind it. In the twenty or so years prior to Henderson's appointment detectives had gradually become an integral, if small, part of the Metropolitan Police Force. Henderson also found a radical Home Office Departmental Report about the structure and organisation of his new Force lying on his desk awaiting action. It included important changes in the size, nature and importance of the detective aspect of his responsibilities.

In his first year Henderson created the devolved structure for the Force recommended by Fergusson's 1868 Committee. Four District Superintendents became an intermediate layer of command between headquarters and divisions. In addition, and no doubt under the urgent promptings of the Home Office, he increased considerably both the numbers and the pay of the officers attached to the Detective Branch. He also raised the rank of the officer in charge to Superintendent, and appointed three new Chief Inspectors to it. Six first class sergeants joined the strength together with an additional second class sergeant. At the same time he significantly modified Richard Mayne's 'divisional' system by supplementing it with
'a detective sergeant and a number (fixed in every instance by the Chief Commissioner) of constables, permanently stationed in each division,...[to whom]...The investigation of all crime in the division in the first instance is entrusted.'

To his credit however, and perhaps to the disappointment of his sponsors, Henderson did not group the detectives together into a separate division, nor did he do away with the key principle that local divisions should be responsible for the proper investigation of crimes occurring on their patch. Under Henderson, as under Mayne, local Superintendents remained responsible for deploying constables to crime investigation even though some of those constables were now employed permanently in such work.

In other matters, Henderson did not implement Fergusson's concept of direct entry into the detective force. Nor did either he or the Home Office follow up the proposal to bring in legislation to put the Force 'absolutely under the control of the Secretary of State'. Both were quietly dropped or ignored. But even that partial and incomplete implementation of Fergusson's 1868 Report set a precedent that coloured all subsequent views of the role of the Metropolitan Police. It also had a significant impact on the development of policing throughout the nation.

After an initial flurry of activity, the organisation and control of crime investigation and detection drifted off the list of the Commissioner's priorities until almost a decade later. Then in 1877 all Mayne's misgivings about the corrupting consequences of establishing a permanent detective branch in the Force came spectacularly home to roost. His vindication came late, but it was complete. A scandalous case of corruption involving the headquarters detectives of the Metropolitan Police burst on the pages of the broadsheets.

The case originated with the conviction of two major criminals, William Kurr and Harry Benson, for a fraud against a Madame de Goncourt and others. Their method was a version of the time-honoured 'get-rich-quick' confidence trick of an 'infallible' horse race betting system dressed up with all the usual flourishes of hints of insider-information and owner-involvement. When Kurr and Benson landed in prison, they made serious allegations of police corruption. Their target was a group of the most senior detectives in the Metropolitan Police; three of the

---

1 Report of the Departmental Commission to inquire into ... the Detective Force of the Metropolitan Police (1878). Public Record Office, HO 45/66692, page iv
Chief Inspectors who were attached to the Detective branch at Scotland Yard as a result of the implementation of Fergusson’s 1868 recommendations.

On Tuesday 20th November, 1877 at the Central Criminal Court, at the conclusion of what came to be popularly called the ‘Turf Fraud case’ or the ‘Case Against the Detectives’, Chief Inspectors Druscovich and Palmer and Inspector Meikeljohn, together with a solicitor named Froggart, were convicted on an indictment for a conspiracy to prevent the apprehension and conviction of persons charged with crime. The Court sentenced each of the police officers to imprisonment for two years. The jury acquitted a third Chief Inspector of the Detective branch, Clarke, on the same indictment.

The Ibbetson Commission

With committal for trial proceedings in the ‘Turf Fraud case’ going on at Bow Street Magistrates Court, Disraeli’s Home Secretary, Sir Richard Assheton-Cross, appointed another internal Home Office enquiry. This time it took the form of a Departmental Commission. The earlier Fergusson Committee had concealed its purpose. The new Commission displayed no such reticence. Its terms of reference specifically directed it ‘to inquire into the State, Discipline and Organisation of the Detective Force of the Metropolitan Police’. Assheton-Cross selected Sir Henry Selwyn Ibbetson Bt., MP to be Chairman.

Henderson had every reason to expect the Commission to be critical of the lack of interest he and his senior colleagues had taken in the activities of their high ranking detectives. Newspaper reports of the committal proceedings at Bow Street Magistrates Court showed that the detectives appeared to have been accountable only to each other. Fortunately the corruption seemed to be confined to the small body of headquarters detectives at Scotland Yard. Henderson could expect that the Commission would focus its enquiry, and its criticisms, on those officers rather than the divisional detectives employed locally by Superintendents. The Commission might even decide to do away with those headquarters officers. At the very least it must recommend that they be more closely controlled and directed. Henderson acted quickly to pre-empt the Commission’s deliberations and neutralise the bad press his Force was getting.

---

2 The Times Wednesday 21st November, 1877 page 9 col. 2
3 Public Record Office, HO 45/66692. papers, item 1
Henderson's response

Before the Commission had time to begin its work, Henderson produced a report, dated 14th September 1877, in which he undertook to reorganise his detectives to make the supervision of their work more effective. He proposed to do so in ways that would preserve and protect the principles of Mayne’s divisional system. Returning to hitherto neglected aspects of the Report of Fergusson’s 1868 Committee, Henderson said that he would now form,

‘a Special Detective Division under the control of a Superintendent, stationed at the Commissioner's Office, selecting the best men in the existing Detective Force and leaving the remainder to act as patrols in their respective Divisions, a work in which they have rendered excellent service.’

Bending somewhat in the direction he thought the Committee was likely to go, and building on the District structure which the 1868 Committee had also introduced, he went on to ‘propose to appoint four District Inspectors, one to each District for the general charge of the Detectives in the District.’ He hoped ‘that the alterations I now submit will result in the better supervision of the work of Detectives both by the District and Divisional Superintendents and also from the Commissioner's Office.’. He concluded by suggesting that the Commission’s work be delayed to allow it to consider the effects of these changes.

Insofar as his latter plea succeeded, Henderson achieved his objective. Following receipt of his report, the Chairman put back the start of the Commission’s deliberation until after the end of the Assizes on 3rd November. Subsequent events throw some doubt on the Chairman’s motives, however. His consent to a delay may have had more to do with the presence of two well-known and active QC’s on the Commission than with any wish to give Henderson’s reorganisation of his detectives a fair run.

When the Commission began its delayed deliberations, it called Henderson to give evidence. His examination covered two days, 19th and 20th December 1877, and not totally unexpectedly he got a rough ride. He now had nearly 10 years practical experience of the effect of the implementation of Fergusson’s 1868 recommendations on the full-time employment of his men in the investigation of crime. And he now confounded any sponsors he might have had on his

4 ibid. item 19
appointment by making no effort to conceal the low opinion he had formed of the value of his detectives. Considering the nature of the case that had caused the appointment of the Commission he no doubt expected its members to share his view. In exchanges that begin to reveal how much the Detective Branch had changed under his command, Henderson was asked if detectives ought not to be better paid. He replied,

"Yes; if their numbers were limited I should not object to see them much better paid than they are at present, but I do not think that the general body of the force have the same exalted opinion of the detectives as the detectives themselves."

Later, when asked about the expenses incurred by detectives in obtaining information about criminals he said,

"As to paying people for information which the...[detectives]...are very fond of talking about, I must say that I have never known a case in which information has been much worth....You authorise your officers to bribe people, and you are very much surprised that they fall themselves occasionally under temptation."

He also said on the same subject, that "I do not believe very much in a system of obtaining information." And in a remark which Mayne would have heartily endorsed, and which many a later senior police officer might echo, he said that "the necessity for detectives to drink with evildoers is rubbish."

Finally, on the central issue of the usefulness of detectives Henderson was even more forthright.

"But when you come to the details of the detection of crime ... there are certainly not more than half a dozen cases out of the whole lot that might not have been just as well done by men in uniform, and better too,...I confess that my own experience is rather against keeping those men continually in plain clothes, as you must do with men who belong to the regular detective force."

---

5 Evidence to the Departmental Commission to inquire into...the Detective Force of the Metropolitan Police (1878), Public Record Office HO 45/66692 page 209 at 5190
6 ibid. at 5194
7 ibid. at 5195
8 ibid. page 222 at 5456
9 ibid. page 211 at 5213
Colonel Labalmondiere, the long serving Assistant Commissioner (and former Inspecting Superintendent and latterly Acting Commissioner of the Force), gave evidence to the Commission two days later on 22nd December. As someone who had served 12 years with the Force under Richard Mayne and 10 years with his successor, Labalmondiere was in a unique position. He could remind the Commission of the arguments against the employment of full-time detectives engaged in the investigation of crime that the first Commissioners had put forward, and which they would no doubt have forcefully repeated. He might have reminded the Commission of the founding principles of the New Police and of the reasoning behind the joint first Commissioners vigorous defence of them. But he did not. Instead, he did not demur from the Commission’s praise of the centralised detective force maintained by the Dublin authorities. He went further, and positively agreed that there would be benefit in centralising London’s detectives. Labalmondiere’s career with the Metropolitan Police had not much involved him in crime detection, so his failure to support his Commissioner might therefore be excused on that ground. But, in any event, his opinions probably made no real difference to the outcome of the Commission’s inquiry.

Considering the nature and extent of the corruption exposed in the ‘Turf Fraud case’, Henderson had every right to expect that the Commission would share his low opinion of his detective officers. For the same reason, he could anticipate that his views on the usefulness of the central detective unit would be reflected in the Commission’s Report. He was to be severely disappointed in both respects.

The Ibbetson Report

Only by looking at the proceedings of the Commission from the perspective of its final report does the reason become apparent. Members generally frame their questions as propositions based on the assumption that a centralised and separate department was the best way to improve the performance of detectives. Indeed one of the members, Colonel Fielding, gives the game away at one point by referring to such a proposal as ‘Sir Henry’s plan’. The Chairman, Sir Henry Ibbetson, himself made the same mistake (if that is what it was) when questioning a witness about the command structure for detectives.
Clearly, the Commission had, like its 1868 predecessor, made up its mind before witnesses were examined. The corruption that had been the immediate cause of its appointment solely involved men permanently employed in a centralised detective unit. The Commission not only did not diminish or remove that unit, they decided greatly to increase it, and its influence and standing in the Force.

When Ibbetson’s Report appeared, it began by setting out an account of the evolution of the detective activities of the Force. The Commission does its credibility no service by misunderstanding this aspect of the history of the Metropolitan Police. Even allowing for Labalmondiere’s silence, its grasp of the essential locally-based continuity that characterised the development of criminal investigation and detection in the Force is lamentable. Surveying the condition of the Force the Commission made brief reference to Mayne’s approach to the detection of crime, saying without further expansion that, ‘In the earlier days it had been the custom for men to be taken out of uniform for a month at a time in plain clothes to inquire into particular crimes as they arose.’ It then misrepresented Henderson’s modification of that system by saying that, ‘in 1869 this system was abandoned and the present divisional system established.’

Far from abandoning the locally-based approach to crime investigation, Henderson had merely modified Mayne’s already well-established ‘Divisional’ system by adding a few full-time detectives to it. He had however, left local Superintendents in control of those detectives and had not shifted responsibility for police involvement in crime detection from them. In accord with Mayne’s view, Henderson’s small group of Scotland Yard detectives merely provided support to divisions.

Compounding and confirming the impression that it did not fully appreciate what it was looking at, under the heading ‘Duties of Detectives’, the Commission noted that, ‘The duties of the divisional detectives are divided into the enquiries into crimes reported to have occurred in the Division and the patrolling of the streets in plain clothes when not so engaged.’ while ‘the duties of those at the Scotland Yard branch are very different.’

On the duties of those latter officers, the Commission reported that:

---

14 Report of the Departmental Commission etc... (1878) op cit. page iv
15 ibid. page v
'With one or two exceptions the officers of that body, unless specially sent by the Chief Commissioner to take up some case already inquired into, do not occupy themselves in preventing or arresting the ordinary class of crime.

They are principally engaged in either Government or official enquiries, naturalisation cases, searching for missing persons or on what are called the higher classes of crime such as heavy forgeries, murders, turf frauds, loan office and post office swindles.'

In its report therefore, although it had earlier claimed that Mayne’s ‘divisional’ system had been swept away, the Commission nevertheless describes much the same division of responsibilities as between locally-employed and centrally-based detectives as had existed in Mayne’s time, and which was a main feature of his crime detection arrangements. The only important change made by Henderson was to add a few full-time detectives to each division. Those officers supplemented, rather than replaced, the constables put out in plain clothes for crime investigation and detection purposes as required by local circumstances. Even that difference was not significant in practice, however. The permanence of Henderson’s additional full-time detective officers was not certain. Just like all their predecessors they were selected by divisional Superintendents from among their own local uniform patrol constables, to whose ranks they could be returned at any time. And Henderson, in his evidence to the Commission, evinced a strong aversion to constables being employed too long in detective duties.

Remarkably, the Commission even seems to confirm Henderson’s jaundiced view of the value of his detectives. The Scotland Yard contingent, from whom the ‘Turf Fraud’ conspirators emerged, was the most permanent under his Commissionership. The Commission noted that;

‘Their [the Scotland Yard detectives’] Superintendent never even sees the reports of crime from the different divisions except in the case of one of the central officers being employed.’

16 ibid. page v to vi
17 Evidence, etc., op cit. at page 211 at 3213
In confirmation of Henderson’s view of the value of these headquarters detective officers, the Commission then went on to report that when employed to deal with divisional cases, their success rate was miserable.

‘In 69 enquiries in the past two years only 19 persons have been arrested, of whom 3 were discharged.’

These comments also show that as late as 1878 the Detective Branch at Scotland Yard had no overall responsibility for crime investigation and detection in the Force.

Emergence of the CID

The Commission failed to understand the system on which it reported. It also ignored facts that demonstrated the truth of Henderson’s aversion to the full-time, centralised employment of his men in the detection of crime. Nevertheless its Report plunged into the creation of a highly centralised, separate, full-time professional detective force.

While its inquiry displays manifest weaknesses and omissions, the Commission’s recommendations are explicit and coherent. They set a pattern for the organisation of criminal investigation in London that became the model for police criminal investigation departments throughout the nation for almost 100 years. The Commission concluded that, ‘the first condition of any improvement is ... the establishment of a united and distinct force, for that particular branch of police work.’

Echoes of Peel’s plea to the House of Commons in April 1829 for the reform of the fragmented approach to policing which characterised the ‘watch and ward’ predecessors of the Metropolitan Police are uncanny. On both occasions, lack of unified action is identified as the problem. Again the diagnosis is a lack of communication between the units and individuals involved. Once more the solution is to centralise and unite the organisation and appoint a suitably reliable and qualified candidate to have charge of it. The Commission decided to,

‘strongly recommend that an Assistant Commissioner, who should be a lawyer having magisterial experience should be placed at the head of the

18 Report etc, op cit. page vi
19 ibid. pages xv to xvii
Detective branch, ranking next to the Chief Commissioner and having charge of the whole force in his absence. 20

The recommendations of Ibbetson's Commission thus complete the destruction of the ancient division of responsibility between locally elected constables and royally appointed magistrates. The faulty drafting of the 1839 Metropolitan Police and Metropolitan Police Courts Acts had narrowed the distinction. The consequent emergence of the professional police detective after 1842 then blurred it. And the 1878 Ibbetson Commission obliterated it by proposing that a lawyer with magisterial experience should be recruited into a senior operational role in ranks of the Metropolitan Police Force to command its crime investigation and detection duties.

The culture of professional policing

But the 1878 Ibbetson Home Office Departmental Commission went beyond those administrative changes, profound in effect though they were. It transformed the culture of policing. After Ibbetson the investigation of reported crime and the identification, detection and prosecution of criminal offenders became, not just one of the functions performed by the professional police service, but its pre-eminent activity. In a recommendation whose consequences were to resonate throughout the whole subsequent history of the modern police service, the Commission proposed that 'a detective should rank higher in his class than a preventive man' and that his pay should be 'considerably in excess of the other branch of the service.'

The profundity and persistence of that cultural change in professional policing can be detected even today. In an article in 'The Times' on 4th August 2003, its Legal Editor, Frances Gibb, reports the success of a serving police officer in being placed first in an examination to qualify as a solicitor. The officer gave birth to triplets during her course but still completed every part of it, making her achievement quite remarkable enough to justify its announcement in 'The Times'. However, despite decades in which the police service had treated and paid uniformed and detective officers as equivalents, and indeed fostered and encouraged interchange between them in a effort to have their work seen as merely different but equally important aspects of policing, in the biographical background to the article the officer is described as having gained 'a 2.1 degree in

20 ibid. page xvi
genetic pathology and virology' and to have then 'joined the police force and worked her way up from a bobby on the beat to a detective.' In fact, of course, the officer had merely decided to specialise in that branch of the service rather than the many others open to her. But the shadow of Ibbetson lingers on in the public mind.

The Ibbetson Commission also finally struck down the principle that a detective should be locally appointed and controlled, saying that recruits to the detective branch, 'should be selected entirely by the head of the detective department and his chief officers.'\footnote{ibid. page xvi} The only point on which it agreed with Henderson was on the question of detectives being engaged on patrolling. Accepting his view, the Commission proposed that the duties of the 'detective force' should continue to include patrolling in plain clothes.\footnote{ibid. page xv}

Sir Henry’s report went to the Home Secretary on 25th. January 1878. By April Instructions to the Metropolitan Police Force had incorporated its main recommendations. Metropolitan Police Office Police Orders of 6th April 1878 begin by saying,

'From Monday next, April 8th the whole of the Detective Establishment will form one body under the director of Criminal Investigation.'\footnote{Public Record Office HO 45/66692 item 59}

The Order details the new ranks and pay scales of the 'detective force', implementing the Commission’s recommendations about their enhanced status.

Already, in the previous month, C. E. Howard Vincent, a witness to the Ibbetson Commission, had become the first Director of Criminal Investigation at Assistant Commissioner level and he went to work with a will. By 1886, at the end of Henderson’s reign as Commissioner, the Metropolitan Police Force employed 313 detectives wholly on criminal investigation duties. They included a headquarters department at Scotland Yard composed of 32 officers under the command of a Chief Superintendent. Divisions had a further 281 full-time detective officers nominally attached to them. In practice, those officers answered directly to Scotland Yard.

The contrast with Richard Mayne’s view of the priorities and purposes of policing could hardly be more stark. He and his fellow first Commissioner, Charles Rowan, had always seen the New Police as a purely preventive force, reducing
crime by the deterrent and interventionist effect of their uniformed presence on
the streets. Richard Mayne clung fiercely to that view of the functions of the
police throughout his long tenure of the Commissioner's office. He held that
crime detection was a peripheral part of the work of a 'street police' related only
to its 'quick and fresh pursuit' responsibilities, and with no place beyond that in
the role and structure of policing.

When, after 1839, he agreed that some of his constables should be engaged in the
identification and detection of offenders in support of the magistrates of the
metropolis, he ensured that they should do so only under their direction and
control. Even under the most severe pressure from Government and the press,
he kept his own complement of detectives down to a minimum - just 16 officers
out of a maximum total of some 8,960 - and all under his direct command. Yet
within ten years of his death, and despite the strong reservations of his successor
Henderson, the detective function expanded to cover all crime reported in the
metropolis and had emerged as one of the major activities of the police. It
actually took 'precedence of the uniform or preventive branch of the service.' And
the proximate cause of that profound change in the status of the detective in
policing was a serious case of corruption involving the most senior and powerful
detectives in the Force.

The practical effect of Ibbetson's Report, and its obvious intent, was to separate
the detective from the ordinary uniformed police officer. The recommendations
giving sole right to select new detectives to those already in post in the new
criminal investigation department, or 'CID' as it rapidly became known, saw to
that. Yet by the Commission's own account that was the root of the scandal that
had first caused it to be appointed. It was precisely that separation of detectives
from the main stream command structure, their inward-looking isolation and lack
of outsider supervision that had opened the door to corruption. Henderson
warned the Commission of the corrupting effect of leaving professional police
officers too long in detective work. Its answer was to create a career structure
that guaranteed a detective a whole police career in plain clothes, and solely under
the command of other detectives.

24 Report of the Committee on the Metropolitan Police Force etc.(1868) Public Record Office HO
45/149463, item 2 (at rear), page 9
25 Report etc, (1878) op cit. page xvi/xvi
Significance of the ‘Turf Fraud case’

Ibbetson’s Report and its transformation of the Detective Branch of the Metropolitan Police into the first modern Criminal Investigation Department is the most obvious and direct consequence of the 1877 Turf Fraud case. But the trial and conviction of the Turf Fraud conspirators has another importance not fully recognised or even much noticed in the literature on British policing.

The Turf Fraud case began when, in the course of their work, the detectives involved formed an association with Kurr and Benson, both of them active major criminals, that developed into a corrupt conspiracy in which the criminals acquired immunity from prosecution for their offences in return, in this case, for cash and other financial rewards. Many other such conspiracies were to follow that precedent, and were to include benefits far wider than those gained by the Turf Fraud conspirators. A supply of information about criminals’ plans, associates and contacts; the identity of the perpetrators of undetected or imminent crimes; and even a share of the proceeds of crime or of the rewards offered for the return of stolen property, came in time to be the currency of such arrangements.

These conspiracies against the public became and remain depressingly common in the history of the full-time professional detective. The Turf Fraud case is not notable in the nature or scale of the corruption involved. The old Bow Street officers had a considerable reputation for this kind of closeness to, and cooperation with, the criminal classes. The case caused a scandal among public and politicians at the time because of the rank and prominence of the police officers involved, and for that reason it has frequently been the subject of subsequent commentary and analysis. But its true significance in the history of British policing is quite different. The case is important because it is an unmistakable indication that a major change had taken place in the views, practices and purposes of the Metropolitan Police since its foundation, and specifically, in the degree to which the Force had become involved in crime investigation and detection, and in the identification and prosecution of criminal offenders.

How and why that change took place is not clear from the public record and is yet another issue not much discussed in the literature on British policing. But by

---

26 Reith, C. (1943) page 49
adopting 'the method of bold conjecture' chosen for this research some conclusions about the processes that brought detectives to pre-eminence in British policing will be drawn.

**The Commissioners' contribution.**

In their evidence to the 1838 Select Committee on the Police Offices, from whose Report the Acts of 1839 emerged, Rowan and Mayne asked, among other things, for two changes. First, that the officers employed by the magistrates to assist them in the executive aspects of their crime investigation, detection and prosecution work be 'replaced' by their constables. That was accomplished by three provisions in the 1839 Acts. One 'discontinued' the plain clothes detective officers employed by the magistrates, while another directed that warrants and summonses issued by the magistrates of the metropolis for execution in the capital could only be addressed to the constables of the Metropolitan Police Force. The Commissioners were then directed to make a sufficient number of their constables 'available' to assist the magistrates in their work. Rowan and Mayne's other request was that 'common informers' be removed from the courts system in the metropolis. That was effected by the provisions of the legislation that restricted the laying of 'informations' about offences before the magistrates to the person aggrieved or a constable.

The effect of these provisions was to remove both the plain-clothes magistrates' 'Runners' and common informers from any active role in the criminal justice system of the capital. That indeed, seems to have been the intent. The problem is however, that although both groups enjoyed an unsavoury reputation, they also served a useful purpose and there were good reasons for their existence. The 1839 Royal Commission on the Establishment of an Efficient Constabulary Force had noted the unsatisfactory provisions made for the prosecution of criminal offenders, and the wide-spread reluctance of victims of crime to go the trouble and expense of pursuing offenders through the courts. The Royal Commissioners reported that much harm was done to the criminal justice system thereby, and that the situation posed a serious threat to law and order as well as an inducement to corruption and unlawful collusion. The magistrates' detective officers and common informers were a response to that problem, and the pressures that had given rise to them did not disappear after 1839. They persisted and in fact, increased.

---

27 Popper, K.R. (1979) *page 81*
Consequently Rowan and Mayne's successful effort to remove the magistrates' officers and common informers from the criminal justice system in London had an effect they did not anticipate or intend. It left their constables as the only possible alternate source of the essential public services formerly provided by those disreputable characters. The Metropolitan Police Force was therefore bound to have to take up such duties however objectionable the Commissioners might find them.

A changed magistracy

At the same time the post-1839 magistrates of the metropolis were equally bound to encourage that development. They not only had to avoid what the 1838 Select Committee had described as,

'objectionable, namely...the Magistrate interesting himself in the detection of that criminal whose case he has to decide upon afterwards.'

but 1839 also marks the start of a period of rapid change and growth in their powers and responsibilities. The Metropolitan Courts Act greatly widened the range and scope of their jurisdiction, and

'In 1855 the Criminal Justice Act permitted all minor larcenies to be tried summarily...Alongside the creation of the new police force, the expansion of summary justice was arguably the most important factor in increasing the ability of the courts to handle the bulk of crime in an increasingly urbanised society.'

Increasing workloads combined with reluctance to involve themselves in criminal detection and prosecution gradually, and perhaps imperceptibly, caused the magistrates of the metropolis to shift their work of investigating crime and detecting criminals to the Metropolitan Police constables who, by statute, had replaced their former officers. After the coincidence of Fergusson's Report and Mayne's death in 1868 nothing and no-one in the hierarchy of the Metropolitan Police stood in the way of that process. Assistant Commissioner Labalmodiere may have noticed the development and drawn attention to the difficulties it could cause but he did not do so, as his evidence to Ibbetson's Commission shows. Henderson himself could not be expected to see either the significance or the implications of it. He almost certainly never discussed policing or its problems and purposes with Mayne before his predecessor's unexpected death.

The rapid increase in the involvement of Peel's New Police in crime investigation and detection in the early years of Henderson's Commissionship is therefore probably no more than might be expected in the circumstances. But it culminated in the constables of the Metropolitan Police becoming the successors to the magistrates' officers of the capital; crime investigation and detection emerging as a second function of British policing; and, the 'Turf Fraud case'. That is its true significance.

Concealment

Fergusson's Report in 1868 produced the career police detective. Time and circumstances allowed his activities to expand and evolve. The Turf Fraud case in 1877 marks the point at which he can first be recognised in his modern form. With Ibbetson's creation of his stronghold in the Criminal Investigation Department in 1878 all memory of the New Police as a purely preventive force, with only a minor part to play in the detection and punishment of offenders, begins to fade. Henceforward the detective became a key figure in the structure of the police service and occupied a central role in its activities, although there continued to be no formal legal or regulatory basis for his work.

As with the earlier Fergusson report of 1868, Parliament gave no scrutiny to these fundamental changes in the structure and purposes of the New Police. Sir William Fraser MP put down a Question for Home Secretary Assheton-Cross in the House of Commons on 26th February, 1878. Following the precedent set by his predecessor, Hardy, Assheton-Cross said, in relation to Ibbetson's Report, that,

"he had received a report, which, of course, in his opinion deserved to be corrected. Some of these had been corrected already, and the rest were under consideration by the Secretary of State; but it would be obviously unwise, until certain points had been corrected, that these matters should be published so that advantage could be taken of them."

The Home Secretary spoke in these vague and inconclusive terms more than a month after the date printed on the final version of the Ibbetson Report, a copy of which rests in the Public Record Office. A radical re-organisation of the Detective Branch of the Metropolitan Police into a new Criminal Investigation Department was in progress even as he spoke. Eight days after the Home

---

29 Parliamentary Debates (Hansard) 1878 Third Series vol. CCXXVIII col. 377
Secretary's reply to Sir William Fraser, Henderson published the Metropolitan Police Order announcing the appointment of Howard-Vincent. The Order announced the transformation of the Detective Branch into a separate criminal investigation and detection department (CID) with a pre-eminent position in British policing. No further mention of the Report appears in the proceedings of Parliament.\footnote{ibid. vols. CCXXXIX, CCXI and CCXI}

\footnote{ibid. vols. CCXXXIX, CCXI and CCXI}
Having presided over a fundamental change in the role of the New Police, Henderson fell from office eight years later in 1886. On Monday 8th February that year a meeting in Trafalgar Square attracted many of the ‘dangerous classes’ so feared by the Victorian establishment. The meeting degenerated into a confused riot that spread westwards from the Square in shop-looting and general tumult. Preparations made for the meeting and the response of the Metropolitan Police to the outbreak of disorder fell far below the need. As a result, the crowd got the upper hand of the large body of constables employed on the event. Henderson himself was present at the Square at the time, but not in charge of the police arrangements. That was deputed to District Superintendent Robert Walker, a 74 year-old veteran. His method of riot command and control was to get himself so embroiled in the crowd that he could neither receive nor transmit any orders. His contribution to the police operation was to get his pocket picked while the crowd broke into mayhem at the centre of the nation’s capital.¹

There was evidence of confusion in the arrangements for the event; of failures in communication and leadership; and of indecisiveness in dealing with the disturbances and their aftermath. Initially government was too occupied with a resurgence of the Irish question to pay much attention to the failings of Henderson and his Force. Ministers sought to let the matter drop quietly because ‘there was considerable friction between the Home Office and Scotland Yard’ at the time. Consequently ‘there was some foundation for the supposition that Sir Edmund Henderson’s dispositions and orders had been disallowed and countermanded’ by his masters at the Home Office.²

Public confidence was badly shaken however, when it emerged that no deep social distress or continental-style insurgency lay behind the riot. It soon became apparent that police loss of control of the meeting was due to mere incompetence. A change of government just two days before the Trafalgar Square incident brought a new Secretary of State, Hugh Childers, to the Home Office. The coincidence worked against Henderson. Childers received the Seals of Office for his new post on the Saturday preceding the riot. At a subsequent meeting in his office with a delegation of trades people anxious to ensure no repetition of the Trafalgar Square disorders, he

¹ Report of a Committee to Inquire and report as to the Origins and Character of the Disturbances which took place in the Metropolis on Monday 8 February (1886) Parliamentary Papers (Cmd 4665) p.426
said that, 'I was here to take over the duties of the office between 11 and 12 noon on Monday', i.e. while the meeting in the Square was in progress.

The new Secretary of State was therefore able to distance himself from any responsibility for the failure of the arrangements made between the Metropolitan Police and his predecessor. When public disquiet rose over the handling of the incident, he ordered an enquiry into the disturbances that started work just one week after the event. This was however, to be no Ibbetson or Fergusson-style departmental inquiry reporting behind closed doors. Childers asked for, and got, a Select Committee of Parliament to deal with the Trafalgar Square incident. It is notable that the Home Office chose a publicly accountable Parliamentary Select Committee to deal with Henderson's handling of a single meeting in Trafalgar Square, when both Fergusson's and Ibbetson's internal departmental committees had been considered perfectly competent to examine and decide fundamental issues of the structure and purpose of the whole Force. That inconsistency in approach is surely enough to indicate the relative importance of policing activity as opposed to police organisation in both the public and the political mind, and of the differential degree to which government and its officials were prepared to expose either issue to public debate and scrutiny.

**Childer's Select Committee**

The Report of Childer's Select Committee condemned the police response to the riot, criticising, 'the lack of overall leadership, the poor communication between different sections of the force and the inflexibility of the police response to an unexpected occurrence.' In addition, 'It identified, as the main single fault, the lack of arrangements made for managing the mob after it had broken up,' concluding that, 'had the police authorities shown greater resource, acting upon a good and well understood system, the mob might have been effectively headed, and easily broken up at an early period of their progress.'

Childers held office for just 6 months. In that short time he managed to produce a report that forced Henderson to resign his post. There is little doubt that Henderson was sacrificed to assuage public disquiet. The decision to appoint a Select Committee says much about the political sensitivity surrounding the Trafalgar Square riot. But in fact no real injustice was done. Henderson had devoted much time and effort to the perfection of the uniform, preventive and protective, branch of the Service, placing

---

3 Public Record Office HO 144/A42380C  
4 Bailey, V (1988) *page 102*  
5 Report of a Committee ... etc. (1886) *op. cit. pages 386-388*
little value on the investigation and detection of crime. It is not altogether unfitting therefore, that it was a failure of his Force in its prime peacekeeping role that cost him his post. It was the aspect of policing on which he had put the greatest emphasis.

Henderson resigned in March 1886. His departure did not bring about any general review or reconsideration of the organisation or duties of the Metropolitan Police. Nor did it trigger any public debate about the role, structure, or functions and purposes of the Force. The aftermath of the Trafalgar Square incident produced no move to try to clarify or change government or public expectations about the services provided by the professional police. Childer’s Select Committee Report deals solely with the failure of the Metropolitan Police as the prime peacekeeper in the capital, and produced only suggestions aimed at improving its performance in that role.

Sir Charles Warren

The dismissal of Henderson and the appointment of an even more militaristic figure to the Commissionership mollified public disquiet and political unease. The new man, General Sir Charles Warren, took up leadership of the Force on 29th March 1886, the day Henderson’s resignation became effective. He had been a member of the Select Committee that had brought about Henderson’s fall, and it was reasonable that he should suppose his recall from service in Africa indicated that he was expected to shake-up the Force in the light of the Select Committee Report.

A strong willed, opinionated and energetic soldier, Warren’s appointment could only re-emphasise and reinforce the militaristic policing associated in the public mind, however unfairly, with Henderson. At the same time Warren brought his own combative and imperious style both to the post of Commissioner and to his relationship with the Home Office. The tensions of that latter relationship, and the attitudes of the Home Office that it revealed, are important to an understanding of the subsequent development of the full-time professional police detective.

Warren made it clear at once that he would have no truck with the involvement of ‘civilians’ in the running of his Force, not even those very senior civil-service officials who were employed within it. He developed a particularly intense dislike for the Receiver for the Metropolitan Police, a civilian member of the top command of the Force who ranked equally with the Commissioner and had responsibility for its budget and resources. The object of his animosity, Richard (later Sir Richard) Pennefather, had been appointed Receiver in 1883. He was only the third holder of this important post. His position, like that of the Commissioner, had a statutory base and had, since 1829, acted as an independent financial and administrative check on the
Consolidation

Commissioner's control and direction of the Force. The Receiver was, and is, widely regarded as the Home Office's 'man' in the organisation.

Pennefather was not only vested with legal ownership of all Force property but also had a responsibility for all monies spent by the Force, with authority to ensure that it was applied to proper purposes. Since almost anything Warren might choose to do involved expenditure, Pennefather had the power to oversee, and occasionally veto, much of Warren's activity. This immediately rankled with the new Commissioner.

The problem was also not helped by Warren's objection to the intervention of the equally new Under-Secretary at the Home Office, Godfrey Lushington, and his subordinate officials, in his contacts with the Home Secretary. They had the annoying habit of subjecting the Commissioner's correspondence with his Home Secretary to their usual bureaucratic procedures and supporting Pennefather in the process. Warren found all this irksome in the extreme and in strong contrast with his experience of a very different relationship with officials at the War Office.

The acrimony and friction of these personal and professional relationships is a significant factor in the history of the development of the British professional police detective. In addition, the public record of Warren's dealings with his Home Office and its officials provides direct evidence of the attitudes and purposes of those in government responsible for the evolution of British professional policing into its present form.

Warren and the Home Office

Signs that Warren's uneasy relationship with the Home Office officials and his Receiver had begun to go seriously awry came as early as the beginning of 1887 and can be detected in a long (24 page) letter from the Commissioner to the Home Secretary, Henry Matthews, dated 9th April. In it Warren complained that his understanding was that 'no official could intervene' between him and his Home Secretary, yet 'this intervention still occurs...[which]...paralyse his efforts on behalf of the efficiency and re-organisation of the Police Force.' He directed his critical shafts at both his Receiver and Lushington's men in this respect.

The letter provoked Lushington into preparing a briefing note for Matthews on 18th April 1887 which reveals the acrimony of the growing dispute. In a beginning that says much about Lushington's attitude toward Warren and his Force, the Under Secretary says;

---

6 Public Record Office HO 144/147288 item 1
7 Public Record Office HO144/208/448403 item 1
'The papers in this box will convince you how rapidly matters in the Met.
Police Department are coming to a deadlock.'

His reference is to the 'Met. Police Department' rather than the 'Force' which is its
proper title, and the significance of that choice of nomenclature is revealed in his next
sentence where he sets out his view of the proper relationship between his Home
Office and the police. He says,

'It is impossible for that Department to be properly carried on, if the Comm'.
and the Receiver do not work together in some degree of harmony, or if the
Comm' does not fully recognise his subordination to the HO.'

Lushington's view is simple. The Metropolitan Police Force is just another
Department of the Home Office, no different from all the others, and equally
subordinate to the Home Secretary and his officials. He therefore advises Matthews
that he should write to Warren to say,

'that in the exercise of all his functions without exception as Comm'. of Police,
he is subject to the instructions of the S of S and that these instructions must
ordinarily be conveyed to him by official letter signed by the Under-
Secretary'...[and that all]...applications...[from the Commissioner]...must pass
officially through the HO...[to be dealt with]...as all other official
correspondence...and that in this respect no proposal for change can be
entertained.'

He ends his note to his Home Secretary by recommending, as a sop to Warren, that
Matthews might say that if the Commissioner thinks there is an exception to these
rules then he should submit a memorandum so that it can be 'carefully examined'.
The extent of Lushington's influence over his Home Secretary in these matters is
unmistakable. On the day the briefing was delivered a note in Matthews hand
endorses Lushington's advice with a simple 'I agree'. A letter closely following the
lines advised was sent to Warren on 23rd April 1887.

The doctrine of subordination of the Metropolitan Police to the Home Office, and the
status of the Force as merely one among many 'departments' under the control of the
Secretary of State, set out in this 1887 note between the top official of the Home
Office and the Home Secretary is not supported by any argument or justification based
on reference either to law or to precedent. To the contrary, the founding Act of 1829
had been carefully framed to avoid the criticism that the New Police were, or could

---

8 Public Record Office HO/44208/A48403 item 2
become, an agency of government power, and Fergusson’s Departmental Committee had earlier noted and confirmed the independence of the Metropolitan Police from Home Office control. Fergusson had actually recommended that the situation be corrected by an Act of Parliament to put the police ‘absolutely under control of the Secretary of State’, a recommendation that had however, never been acted upon. Yet somehow Lushington seems to have come to the conclusion that the Metropolitan Police Force was just another subordinate department of the Home Office subject, through officials, to the directions of the Secretary of State.

Unsurprisingly Warren did not take this response to his complaints quietly. He accepted the invitation to submit a memorandum and commissioned his Legal Adviser (Mr. Davies) to prepare a paper that would summarise the law on his relationship with the Home Office and make proposals on how business between them might best be conducted. On 7th June 1887 he submitted the resultant 150 page ‘Scheme’ with a covering letter addressed directly to the Secretary of State.9

On its arrival at the Home Office Warren’s ‘Scheme’ is described as ‘a curious document’10 but its first part (up to page 144) is, by common consent, a good summary of the law on the respective duties of the Secretary of State and the Commissioner of Police. At that point however, the style of the ‘Scheme’ changes. It turns from legal description to demands and clearly goes too far. Warren (for a change in handwriting at this crucial point seems to indicate his hand directly in, or behind, the content of this later section) wants everything written or said to the Secretary of State that touches on the management of his Force to be ‘laid before the Commissioner for his remarks.’11 He wants any ‘official proposals affecting the Metropolitan Police…referred to the Commissioner for his observations before receiving the final determination of the Secretary of State.’12 He demands that ‘any disapproval or other intervention of the Secretary of State…[be communicated]…bearing the autograph signature of the Secretary of State.’13

Clearly, in the light of Lushington’s letter of 23rd. May which, in accordance with normal practice, would have been written with the full approval of the Home Secretary, the Home Office would not be prepared even to discuss these proposals, as Warren must surely have realised. It must also be said that the discontinuity between the first part of Warren’s ‘Scheme’ setting out the law, and the later section

9 Public Record Office HO144/200/A47288 item 2
10 Ibid. at Minute Sheet
11 Ibid. item 2, document, p.144
12 Ibid. p.146
13 Ibid. p.147
Consolidation

While Warren’s ‘Scheme’ was in preparation and before its arrival at the Home Office, Lushington sent a letter to Warren on 23rd May in which he said, ‘once for all’ that Warren should accept letters from him as expressing the views the Secretary of State, a missive that undoubtedly sharpened the dispute. 14

On 10th July, three days after the ‘Scheme’ arrived at the Home Office, Lushington prepared yet another briefing for his Home Secretary on the state of affairs at Scotland Yard. 15 In a long Memorandum that makes no mention of Warren’s ‘Scheme’ he begins by telling Matthews that;

‘I have to call your attention to these various papers; they show a state of things in Scotland Yard which urgently requires the personal interposition of the S of S and I feel it my duty to speak to you on the subject without any reserve.’

He then lists five (or perhaps six) incidents in which Warren is said not only to have usurped the functions of his Receiver, but also to have failed to comply with the instructions of the Secretary of State on the proper procedures to be followed. Lushington urges Matthews to stop Warren taking over the functions of the Receiver ‘regardless of both the statute and the regulations of the S of S’. He says that ‘this state of things seems to me to be intolerable’; that, ‘the Commissioner has some inflated notion that his Department stands on some peculiar footing of independence different from that of other departments subordinate to the Home Office’; and that ‘he recently disputed the sufficiency of the Under Secretary’s signature as authenticating official instructions.’

Lushington has no doubt about what needs to be done. His Memorandum says,

‘It is plain that there is only one way to restore matters to a proper footing. This is for the S of S to see the Commissioner and give him plainly to understand that he must alter his conduct: that so far as concerns subordination to the Home Office the Department of Met. Police is no way different from any of the other departments (e.g. the Prison Department) subject to the authority of the S of S: that the Comm’ must be prepared at any time to give to the Under

---

14 ibid. (rear of papers)
15 Public Record Office HO144/208/A48043 item 1 (memorandum)
Secretary such explanations, whether written or oral, as he may require, in order to lay the matters properly before the S of S.\textsuperscript{16}

Lushington does not mention Warren's 'Scheme' at this or any other point in his Memorandum, nor does he give any indication that he had read it, but the style and tone of his remarks to Matthews reveal the personal nature of his dispute with the Commissioner. Lushington is clearly exasperated by Warren's disregard of proper Home Office procedures; his circumvention of normal channels of communication; and his tendency to act without consultation. But he is outraged by Warren's refusal to accept Lushington's position as the voice of the Secretary of State, and the gatekeeper of access to him. Warren in his 'Scheme' may have gone too far to one extreme, but Lushington goes equally too far in the opposite direction. Warren at least quotes the statutes in an attempt to justify his demands, even where they do not in fact fully support him. Lushington disdains any source of authority other than himself. His office as Under Secretary of State seems sufficient for him to assume that he can direct the Commissioner 'to give ... such explanations as he may require' and to issue instructions to the Commissioner on behalf of the Home Secretary.

The official record is not clear on whether Matthews took Lushington's advice on this occasion. No note of the suggested meeting with the Commissioner is attached to the file now stored in the Public Records Office. The indication is that Matthews thought better of confronting his Commissioner at that stage, leaving Lushington to continue to monitor and record Warren's indiscretions.

That picture fits well with the next item on the file, a letter from Home Secretary Matthews to Warren four months later on 30\textsuperscript{th} October, 1887.\textsuperscript{16} By now Matthews had a sufficient stock of ammunition to convince him he ought to try to settle matters with his troublesome Commissioner. He tells Warren that this later information, 'has confirmed an impression left upon my mind by other incidents, that you do not fully appreciate the limits to your authority as Commissioner of Police, or your relations to the Home Office'.

Matthews then lists five 'incidents' in which on the Home Office (i.e. Lushington's) view Warren had exceeded his authority, particularly where Warren appeared to have independently issued instructions to his men or had written to magistrates in the metropolis on policing matters. Matthews says, 'I need scarcely remind you that under the Metropolitan Police Act no Order as to the General Government of the Force can be made by the Commissioner except with the approbation of the Secretary

\textsuperscript{16} ibid. item 1 (papers)
of State', which is a true reference to the relevant provision in the 1829 Metropolitan Police Act, showing that he must have had his attention drawn to the legislation on his relationship with his Commissioner.

But he is not content to leave the matter there. The Home Secretary goes on to say that,

'Apart from this, the Commissioner of Metropolitan Police is in the same position with relation to the Secretary of State as the Head of any other Home Office Department: and no rule is better understood in the Civil service than that the head of a Department is not at liberty to take a step involving public policy without first obtaining instructions for the Secretary of State, or other superior authority'.

This is the view argued by Lushington in his earlier July Memorandum, but Mathews does not seem to be prepared to take the line of action advocated in that document, i.e. to see Warren 'and give him plainly to understand [his] subordination to the Home Office'. Instead, the Home Secretary closes his letter with a mollifying assurance that he would always consult Warren before giving him instructions on matters of 'public policy', and that he would, 'attach the fullest weight to any representation coming from you.'

The very next day, 1st November, Warren's reply was despatched. He took space and trouble to deal with the whole of Matthews' list of causes for complaint. In each case he quotes the relevant statute which, he thinks, justifies his action. In particular he points out to his Home Secretary that the constables under his command are themselves possessed of powers and duties under the law, with which not even he could interfere. But on the main issue he is trenchant. He says;

'You say also that the Commissioner of Police is in the same relation to the Secretary of State as the Head of any other Home Office Department; I beg your attention to the fact that I am in no way whatever under the direction of the Home Office; in some matters I am directly under the authority of the Secretary of State; in other matters I have my duties and responsibilities defined by Act of Parliament just as a Constable, a magistrate or a Judge has, and I know of no power by which I can be deprived of those duties and responsibilities as long as I remain Comm', and the Act continues in force.'

17 ibid. item 2 (papers)
It should be remembered that Warren had not yet had a response to the proposals set out in his 'Scheme', and it takes careful reading to realise that at a critical point in his letter he makes distinction between the authority of the Home Office and that of the Home Secretary himself. He accepts, as he must, that Secretary of State Matthews has authority over him in some matters. The 1829 Metropolitan Police Act provided that the new Justices (Commissioners) appointed to control the Force should act under the authority of the Secretary of State' for some purposes. But Warren rightly rejects the idea that he is part of, or subject to, the Home Office hierarchy as Lushington would have it. Unfortunately, that important subtly is lost in the combative manner of its expression.

Two days after receiving Warren's letter, on 3rd November, Matthews replied. His irritation at Warren's defiance is apparent. He rejects all Warren's appeals to law and disputes Warren's version of events in detail. He repeats his view that, 'the Commissioner of Police is in the same relation to the Secretary of State as the Head of any other Home Office department, for instance, the Chairman of the Prison Commissioners,' again, at this point, drawing on the wording of Lushington's July briefing Memorandum. But he then goes beyond Lushington to say;

'I conceive that in all matters concerning the performance of your duties under the Metropolitan Police Act you are liable to receive instructions from the Secretary of State, to which you are bound to conform, whilst in certain matters you cannot act without the authority of the Secretary of State' before concluding with a slightly more conciliatory paragraph acknowledging Warren's specific powers and duties under the law, and his own wish to interfere as little as possible in the 'administration of the Force'.

Significance of dispute

These exchanges are extraordinary. Their content owes much to some bitter personal relationships, between Warren and his Receiver, between Warren and Lushington, and eventually between the Commissioner and his Home Secretary. It is unfortunate that Matthews allowed himself to be drawn into all this, but drawn he was, and surely into error. It was never the intention of Parliament that the Metropolitan Police Force should be under the control of the Secretary of State, as Fergusson's 1868 Committee identified. Nor that any government minister should, 'in all matters concerning the performance of' the Commissioner's 'duties under...the Act', be able to issue 'instructions...to which...[he is]...bound to conform'. That would put government in a position to employ the Force for its own partisan ends if it so chose, which was
precisely the fear that so aroused the 1833 Select Committee on the Popay case, and caused Rowan and Mayne to declare that they would refuse to obey any such order, and resign if it was ever given.

As was anticipated earlier, the true value of these exchanges lies in the light they throw on the attitudes and opinions of those in power in government and the civil service in the 1860s and 1870s when the Fergusson and Ibbetson Home Office committees were creating a criminal investigation department within Peel's New Police. In that period, and especially under Lushington and Matthews, the openly and strongly stated view of the Home Office was that the Commissioner of the Metropolitan Police Force was merely one among many heads of department within the Home Office, answerable to and under the directions of the Secretary of State to exactly the same degree as any of them, and accordingly subject to the direction and control of the Secretary of State and his staff.

That view directly contradicts the intention of Parliament in setting up the Metropolitan Police Force as it is expressed in the debate on the passage of the Act of 1829 and in the wording of the legislation itself. It is significant that in neither Lushington's memorandum of 10th July 1877 nor in Mathews letter of 3rd November 1877 to Commissioner Warren is any attempt made to justify that view of the relationship between the Secretary of State and the Commissioner(s) of Metropolitan Police Force, either by reference to law or to precedent. Since Warren had recourse to quotations from law at every point in the dispute the conclusion must be that no legal justification or precedent was put forward by the Home Office because no such support for its position was available or ever existed.

Unfortunately, with Mathews' letter of 3rd, November 1887 and Warren's 'Scheme' of 7th. July 1887 lying unanswered on the desks of their respective recipients, the issue of the relationship between government and the emerging professional police service must, perforce, be left for other, and wider, research. There is neither space nor need to explore it further here since it is the significance of the disputes between Commissioner Warren and the Home Office for the involvement of Peel's New Police in the investigation and detection of crime that is of interest. Pursuit of that line of enquiry now requires a step back in time to the start of Warren's occupation of the Commissioner's office.
Triumph of the Detectives

Warren's departure
The ramifications of Warren's resentment of 'civilian interference' in the running of the Force and his abrasive relationship with the Home Office and its officials touched directly on the place and provenance of his detectives. On his appointment, Warren found James Monro, a former high official in the Indian (Bengal) Civil Service, as Assistant Commissioner of the Criminal Investigation Department. This post was the successor to the Director of Criminal Investigation role first created in 1868 for C. E. Howard-Vincent. Monro had come direct from India into the Metropolitan Police Force in July 1884, following Howard-Vincent's decision to pursue a Parliamentary career. To have a former career Indian civil servant as one of his key operational subordinates linked Warren's disputes with the Home Office to his day-to-day command of the Force and played an important part in the emergence of the professional police detective.

All went reasonably well between the new Commissioner and his head of detectives for the first 18 months or so, despite some overspill from the rumbling dispute between Warren and Lushington. There was however, a constant undercurrent of tension between Warren and Monro over the degree of independence Monro assumed in his dealings with the Secretary of State. The problem was that Monro's immediate predecessor, Howard-Vincent, had enjoyed a direct personal relationship with his Home Secretary. When Monro succeeded Howard-Vincent as head of the CID his position had been regularised to make him an Assistant Commissioner of the Force and hence, directly under the command of the Commissioner. Some of the warmth of that earlier closeness between the head of CID and the Home Office nevertheless remained as a contrast to Warren's factious contacts with officials.

The difference became a specific cause of friction between Warren and Monro when, as is described in the previous chapter, Warren's battle with the Home Office intensified toward the end of 1887. Matters finally came to a head at the beginning of 1888 in a confrontation that reflects little credit on either man, but whose legacy provides an important piece of evidence about the introduction of

---

1 Petrow, S. (1993), page 95
criminal investigation departments into British professional policing. The details of the dispute are complex, convoluted and unimportant in themselves, and can be viewed in a single bulky file now in the Public Records Office.

For the present purposes it is enough to note that the relatively simple process of finding a replacement for Monro's deputy (Chief Constable Williamson) during a prolonged period of absence due to illness (Williamson began to suffer from intermittent fits of fainting), degenerated into a ferocious confrontation between Warren and Monro. The problem arose in January, 1888 while the main dispute between Warren and the Home Office remained unresolved. All the principal players in the conflict between Warren and his despised 'civilians' were drawn into the fray, with tempers on all sides being inflamed by the wider dispute.

An increasing acrimonious exchange between Warren and Monro over the selection and appointment of the latter's temporary deputy culminated in a stiff request from Warren that Monro should forward 'copies of any correspondence that has taken place between you and the Home Office...[together with]...any record of communications verbal or otherwise of the subject of an Assistant to you or the appointment of [your deputy].' When Monro flatly refused to comply Warren issued a formal written instruction that henceforward Monro was to keep a record of all correspondence or verbal communications with the Home Office, and to 'let me have them every day in order that I may know what transpires' an order that so affronted an incensed Monro that he declined in writing either to accept or to obey it.

Warren's furious response on 7th May 1888 was to withdraw his support, not just for the appointment of a temporary deputy for Monro but for any addition to his top team at all - a volte face he compounded two days later in a letter to the Home Secretary in which he complained that,

'Mr Monro appears with the last few days to have been acting independently of the control of the Commissioner, and in correspondence which I enclose of this days date, declines to furnish me in future with

---

2 Public Record Office HO 144/446472B
3 ibid. page 69
4 ibid. page 72
5 ibid. item 9, papers, Warren memorandum
6 ibid. Monro's reply
7 ibid. item 8, papers
copies of all correspondence which passes between himself and the Home Office...’

He told the Home Secretary that ‘I cannot exercise my responsibility while an Assistant Commissioner asserts his independence.’

Under Secretary Lushington no doubt saw the irony of Commissioner Warren complaining about the ‘independence’ of one of his subordinates, but nevertheless did his duty and found a way through the messy business. On the basis of his advice, Home Secretary Matthews informed Warren that despite earlier notice to the contrary Monro was not, in fact, to have a new temporary deputy, at the same time advising Monro to pass all matters of importance through the Commissioner.

Any hope the Secretary of State may have had that his action might get Warren and Monro to rub along together was disappointed. Following his falling out with Warren, Monro left the Metropolitan Police in August 1888 to take up an appointment as ‘Head of Detectives’ within the Home Office. In that post he sat on the sidelines through the subsequent period of difficulty Warren and the Metropolitan Police had with the Whitechapel murders (popularly known as the ‘Jack the Ripper’ case). He therefore avoided the public and Parliamentary opprobrium that fell on the Scotland Yard detectives formerly under his command.

**Warren and the CID**

The incident of Monro’s temporary deputy was an altogether nasty episode between Warren and his head of CID, the significance of which extends beyond its outcome. With Monro out of the way, Warren decided to embark on a root and branch review of his large Criminal Investigation Department. He saw that action as serving several purposes. It was first and foremost a reassertion of his command over his Force and a means to reclaim control of his detectives from the hands of ‘civilians’. At the same time it was a welcome and timely way of responding to the adverse publicity the detective part of his Force was getting in the ‘Ripper’ case. From the perspective of the involvement of Peel’s New Police in the investigation and detection of crime however, the importance of Warren’s decision is that it opened a further window on the processes by which criminal investigation departments became established in the British professional police service.

---

8 ibid. *item 9, papers, Warren letter 9.5.1887*
As part of his review, Warren wrote to the Home Secretary, Henry Matthews, on 5th November 1888. He refers to 'a Report of the Departmental Commission appointed on the 18th August, 1877', i.e. Ibbetson's transformation of the detective branch into a full-scale criminal investigation department during Henderson's Commissionership. Warren's letter is worth quoting at length. It gives a good impression of the tone he generally adopted in his dealings with the Home Office. More importantly, it throws light on inner workings of the processes by which full-time detective departments were built into the structure of British professional policing.

Referring to Ibbetson's then ten-year old 1878 Departmental Commission Report, Warren says:

'I have to say that this Report appears to be quite unknown in the Commissioners Office as a document, and never appears to have been brought to the notice of the Commissioner for any action to take place on it. Yet for all this the greater part of the recommendations have been more or less carried out. So far as this office is concerned a new Criminal Investigation Department sprang into being without any action on the part of the Commissioner, and its origin is involved with mystery. Under the Statute the whole of the changes ought to have been first proposed by the Commissioner.'

In confirmation of the conclusions reached earlier on the dubious value and relevance of Ibbetson's Report, Warren continues by saying:

'I enclose a copy of the Report which I have annotated; but I have to observe that the Report shows a rather imperfect knowledge of Police requirements, discipline and organisation ... It is therefore very difficult to say in a few words exactly what has been done or even to describe it; in fact some persons might say that the divisional system was never altered since it was first started, while others might say that it has been entirely transformed'.

He concludes his letter with an oblique dig at Monro, by this time safely installed in the Home Office.

---

9 Public Record Office HO 45/A494632
‘I think we have every prospect now, with Mr. Anderson as Assistant Commissioner to help me, of obtaining a real Detective Department efficient to an extent which has never as yet been contemplated;...though if the Criminal Investigation Department does not succeed at the end of two years from now in giving satisfaction in a general way to all, except those connected with criminals and rogues, I think it may fairly be said there is something wanting in its organisation, and the whole system should be considered.’

In the context of the provenance of the British professional police detective, this letter is significant in three ways. It graphically describes the irregular manner of the creation of the Criminal Investigation Department at Scotland Yard. It reveals how little thought government gave to that radical innovation in policing. And it shows in the clearest possible way the lack of any serious public or political attention to the decisions involved.

By the time of these events and in contrast to the verbal dealings that characterised Rowan and Mayne’s relationship with their successive Secretaries of State, government was becoming bureaucratised. Contact between ministers and officials was now much more commonly noted and the record filed. Yet in founding the full-time professional police Criminal Investigation Department Warren reports that the Home Secretary (Sir Richard Assheton-Cross) dealt directly with Howard-Vincent. The man in charge of the Force, the Commissioner, Sir Edmund Henderson, took no part, giving only ‘verbal concurrence’ to what took place. That manner of proceeding is surprising in the circumstances. Assheton-Cross had sponsored Ibbetson’s controversial Report and had, no doubt, a hand in ensuring that it reached the ‘right’ conclusions. Yet when it came to the implementation of his Commission’s recommendations, it would appear that Assheton-Cross was content to keep his Commissioner at arm’s length from what he must have known was a controversial development.

Warren’s letter also demonstrates that his predecessor Henderson, whose evidence to Ibbetson’s 1878 Commission was scathing on the value of the professional detective, equally clearly washed his hands of the implementation of the Report. By Warren’s account he seems to have been content to leave that work to the new Director of Criminal Investigation and the Home Secretary who appointed him. But Warren was wrong to think that Henderson took no direct part in those activities.
In fact Henderson enclosed a plan for the creation of the Criminal Investigation Department at Scotland Yard when he wrote formally to the Home Office on 3rd March 1878, following the publication of Ibbetson’s Report. He addressed his letter, not to the Home Secretary himself, but to Lushington’s predecessor as Under Secretary, the ‘Hon. Sir. A. Liddell.’

‘I have the honour to submit for the consideration of Mr. Secretary Cross, a Memorandum embodying the views of the Director of Criminal Investigation [Howard-Vincent] and of myself on the future organisation of the Detective Force in the Metropolitan Police, and I have to request the sanction of the Secretary of State for the numbers of officers and rates of pay as herein set forth.’

A note on the papers says ‘Scheme approved 6/4.78’. Corres. referred privately to Comm’. of Police 6/4.78’. Warren was right to conclude that Henderson had little to do with the implementation of the 1878 Report. But he cannot claim to have had no hand in it at all.

Resignation of Warren

Whatever Warren’s cause or motive in raising the provenance of his Criminal Investigation Department, his timing and his manner in presenting the issue were bound to cause offence. The context was the long-running dispute with the Home Office exacerbated by public dissatisfaction with the performance of his Force in the Ripper case. His observation that Ibbetson’s Report ‘showed a rather imperfect knowledge of police Requirements’, coupled with his assertion that the ‘whole of the changes ought to have been first proposed by the Commissioner’ could only strike a jarring note with Lushington and his colleagues. And the implied criticism of Monro in Warren’s expressed hope of now ‘obtaining a real Detective Department efficient to an extent which has yet never been contemplated’ was surely intemperate given that the object of his critical shaft was at that moment occupying a senior position in the Home Office.

But it was surely his promise that the ‘whole system should be considered’ if its performance did not improve ‘at the end of two years from now’ that must have most alarmed the Home Secretary and his senior advisers; politically, personally and strategically. Politically, because criticism of the conduct of the Ripper case was not confined to Warren and his men. Matthews was ‘unpopular with all

10 Public Record Office HO 45/6692 item 43
political parties...and his resignation was eagerly canvassed in 1888’ over the failings of the Metropolitan Police detectives. Warren’s suggestion that he might disband or reform the CID could well be seen as a pre-emptive attempt to divert criticism away from himself. It could then only fall on Monro and perhaps then on Matthews. Personally, because the tone and contents of Warren’s letter was a re-assertion of his independence and his authority over his Force (or at least the detective part of it), and hence a rejection of the Home Office view of his ‘subordina tion’ to the instructions of the Secretary of State. Strategically, because Warren’s threat to his CID would undo, or at least expose to public scrutiny, the convert effort of the Home Office to transfer the work of the ‘Runners’ to the New Police.

It is a matter of regret therefore, that Warren did not last long enough in his post to see through his intention to review, reform and perhaps disband his CID. He was on the brink of bringing to a head the whole issue of the presence of detectives in policing when he fell into a trap of his own construction. When the three issues of his long-running and increasingly bitter conflict with the Home Office; his explosive dispute with Monro; and public disquiet over the ‘Ripper’ case, were coupled with the ill-judged and combative tone and content of his letter on the Criminal Investigation Department, a crisis ensued in which he offered his resignation in what looks very much like a fit of outraged exasperation.

On the 8th November 1888, just three days after he had delivered his letter on the CID and before he had had any reply, Warren received a letter from one of the Home Office officials, E. Leigh-Pemberton. He informed Warren that the Home Secretary had seen an article in ‘Murray’s Magazine’. In it Warren had made some vaguely critical comments with regard to previous government policies on the Metropolitan Police. Leigh-Pemberton drew Warren’s attention to, and enclosed, a copy of a nine-year old instruction issued on 27th May 1879; that is, almost seven years before Warren’s appointment to the Commissioner’s Office. The instruction directed that no officer of the Home Department should publish any work relating to the Department without prior sanction from the Secretary of State.

11 Begg, Fido and Skinner (1991) page 287
12 Public Record Office HO144/A48043, item 3
The missive infuriated Warren. It asserted Lushington's long-fought claim that Warren was no more than, and in the same category as, any other Home Office official. It also came, not from the Home Secretary as Warren demanded in his 'Scheme' and had frequently asserted with vehemence any such communication ought to have originated, nor even from Lushington, the Under Secretary, who at least claimed the right to speak for the Secretary of State, but from an official whom Warren would regard as well below him in both rank and importance.

Against the background of all the strains and pressures between Warren and the Home Office, timing and tactics sharpened the impact of the admonition. To have such a minor matter raised at such a time by such a lowly minion among his opponents brought Warren to the end of his habitually short fuse. He dashed off a strongly worded letter of resignation that very evening, in a hand shaking with rage. That he had much more than merely his article in 'Murray's Magazine in his mind as he wrote is evident from the injudicious opportunity he took to ignite the long-smouldering debate about his relationship with Home Office. He included the belligerent assertion that the Secretary of State, 'had not the power under the Statute of issuing orders for the Police Force', concluding with an offer to resign that the Home Office were more than grateful to accept.

Lushington's influence is clearly visible in the affair. A minute in his hand appears on Warren's resignation papers. In it Lushington forwards to his Home Secretary copies of a preliminary exchange of notes between Warren and another Home Office official, Ruggles-Brise, on the subject of the 'Murray's Magazine' article, saying,

'Please see the attached letter from the Commissioner to Mr. Brise, marked Private.

If this impudent letter does not open the eyes of the Secretary of state to the fact that the Commissioner is, and has long been out of hand, in a state of complete insubordination, ignoring the authority of the S of S, nothing I can say will be of any avail.'

Examination of these same resignation papers reveals Lushington as the source of the complaint that Warren's article in Murray's Magazine had breached a departmental instruction, and also shows that Warren's letter on the CID was

---

13 ibid. item 4
14 ibid item 3 (papers)
seen by Home Office as yet another example of his insubordination. These papers also record that it is Lushington who suggests that Leigh-Pemberton, rather than himself or the Home Secretary, should write the resignation-precipitating letter of admonition.

The inference to be drawn is of a direct connection between Warren’s letter of 5th November 1888 on the irregular manner in which the Criminal Investigation Department had been created and the possibility that its future might be ‘considered’, and the disciplinary action instituted by the Home Office over an article in Murray’s Magazine which had the predictable result of Warren’s resignation. A mere three days separate the two events; Lushington’s hand can be detected in both, and the outcome suited his, and his Secretary of State’s, purposes admirably. They were both finally rid of a troublesome Commissioner. If, as seems likely, the Murray’s Magazine incident was a riposte to Warren’s CID missive it could not have been better aimed or delivered.

In a debate in Parliament on the Report of Supply, Metropolitan Police, shortly after these events, Secretary of State Matthews refers to his conflict with Warren. He reveals his mind when he tells the House that, in his view,

'It would be totally unconstitutional that there should be a police force in such a town as London, the commander of which force should hold irresponsible authority, and be able to disregard the instructions of the person who had to answer in Parliament for the conduct of the men under his command.'

Henry Matthews ignores the early history of a professional police force in London in these remarks. It was precisely the possibility of the New Police coming under government control that had so exercised the minds and aroused the fears of ordinary citizens and those who represented them in the House when Peel first brought his proposals to Parliament. Equally Matthews seems to have forgotten, or not been properly briefed about, Henry Fergusson’s recommendation in his Home Office Departmental committee Report of 1868 that Parliamentary time be found for legislation to bring the Metropolitan Police under the control of the Home Secretary. No such action had been taken. Since that advice emanated from his own department, Matthews has no excuse for being unaware of it. He

---

15 ibid. item 72
16 Reports on the Metropolitan Police Force. 1868-1878-1879 Public Records Office HO45/449463/2, page 15
was surely wrong therefore, to claim that he had authority to issue ‘instructions’ to
the Commissioner about the ‘conduct of the officers under his command’.

But despite Warren being clearly in the right in the content, if not the tone, of both
his CID and his resignation letter, the Home Office was more than grateful to let
him return to his military career. Unfortunately for him, and for historians who
may have wished to promote or protect his reputation, he subsequently covered
himself with controversy at the battle for Spion Cop during the Boer War,17 and
was removed from command of the 5th Division to the governorship of
Bechuanaland in April, 1900 to live out the remainder of his life under a
permanent cloud.

The Importance of Warren

Warren was not long in the Commissioner’s office and he has since largely been
disregarded, even ridiculed. But historians ought to be grateful to him. His
conflict with his political masters over the appointment of a deputy for Monro and
the provenance of his CID caused those in government who had responsibility for
policing to reveal their minds and their intentions for the police service.
Nowhere else in the public record is the Home Office view of the emerging police
service more clearly displayed than in the documents and papers created during its
disputes with Warren. Under Secretary Lushington, in particular, is revealed as
a strong partisan of the detectives; as a prime mover in the effort to subordinate
the police service to government control; and as the sponsor and protector of a
criminal investigation department within the Metropolitan Police. In the incident
of Monro’s deputy he went so far as to support the head of the criminal
investigation department in his defiance of a direct (and lawful) order from the
Commissioner on an important issue.

Arrival of Monro

It cannot be by happenstance that Warren’s successor in the Commissioner’s
office on 3rd. December 1888 was James Monro Esq., CB, the former ‘civilian’
Assistant Commissioner and now full time ‘Head of Detectives’ at the Home
Office, from whom Warren had so recently parted on fighting terms. The senior
Assistant Commissioner was Colonel R. L. O. Pearson. The Home Secretary
overlooked him on this occasion.

17 Doyle, Sir Arthur C. (1900) Chapter 15
Monro's experience of police work was mostly Indian, and confined to the headquarters detective branch at home. He was said to have displayed 'a flair for detective work' and predictably proved to be a compliant Commissioner, at least at the outset. He was also the strongest exponent yet of the importance of detectives in the work of the professional police. With the appointment of Monro the Home Office replaced a troublesome Commissioner with one much more to their taste. They also buried the last real threat to the existence of the British police detective.

The reversal in the fortunes of the Criminal Investigation Department caused by Monro's appointment was immediate and complete. Under Warren the future of the whole system of detectives was under threat of being 'considered' if its performance did not improve. Even its provenance and legality might have come into question had Warren survived as Commissioner. Yet within a month the new Commissioner sent a report to Henry Asquith, the equally new Secretary of State who had appointed him, seeking 'a large augmentation of the staff of the Criminal Investigation Department'. He said that, 'The proposal was considered by me more than a year ago' and he enclosed a copy of a report he had prepared on the subject dated 11th November, 1887, that is, while he was the Assistant Commissioner in charge of the CID under Warren's command.

Monro ignored the adverse view of the value of detectives taken by his predecessors and based his bid for an expansion of his detective strength on arguments that were to become familiar in the subsequent rise and expansion of the CID. He cites pressure of work caused by growing public expectations of his detective force. He assures the Home Secretary that, 'in any scheme to improve our criminal administration I am sure we shall be thoroughly supported by public opinion.'

He naturally omits any mention of the need for detectives to prove their value through an increase in their performance in dealing with crime and criminals. That view of the CID died with the departure of his predecessor, Warren, and was not resurrected for almost a hundred years. Monro adopts instead what was to become a standard approach of British chief police officers to any question of an increase in police manpower. He merely says that since the purpose of detectives is to catch criminals and the public demand is for the capture of more criminals,
then having more detectives must not only be a ‘good thing’ but also what the public wants. A line of argument whose circularity and fatuity was only noticed by ministers and officials when Prime Minister Thatcher’s ‘value for money’ revolution hit the public services almost a century later.

Broadly, Monro proposed to have CID officers available at every station in the Metropolitan Police area, with a room dedicated to their use. In addition and entirely unsurprisingly, he sought to appoint an Assistant Chief Constable to deputise for the head of the Criminal Investigation Department when necessary. Monro costed his proposals for the expansion of the CID, including the recruitment of a new deputy head of the CID, at some £14,000 per annum. In the event, and in a pattern that also became familiar, the Home Office subjected the proposal to its bureaucratic procedures and on 4th May 1889 gave Monro £5,000 to spend as he thought fit on additions to his detective strength. 20

The arrival of Monro concluded the last major chapter in the development of the modern police service. It marked an end to all opposition to the addition of the criminal investigative and detective functions formerly performed by the old magistrates and their officers to the role of the professional police. All those activities, including association with criminals and informants to facilitate crime detection, now fell exclusively to the successors of Peel’s New Police. Members of Criminal Investigation Departments and those senior police officers responsible for them lost all sense of there being anything unusual or controversial about the employment of detectives within the professional police service, or their engagement in the investigation, identification, detection and prosecution of criminal offenders. Never again would the question of their validity in or usefulness to, policing be raised. With the aid of Ibetson’s 1878 Report, CID officers quickly became, in their own estimation as well as that of the public, the elite of the police service, a position they occupied beyond the scandals of the 1960s.

Following the Municipal Reform Act of 1835 towns began to acquire the new style of regular police forces. Counties followed with the passage of the County and District Constabularies Act of 1839 (2&3 Vict. cap. XCIII) which provided for the appointment of constabularies under Chief Constables in every county where the justices wished it and the Home Secretary approved the arrangements. All commentators agree that,

20 Public Record Office HO 45/4494637
‘They were largely modelled on the Metropolitan pattern. An increasing uniformity followed, since the watch committees which controlled the municipal police received subsidies which depended on their forces conforming to standards required by the Home Office.’

Given the views of the Home Office discovered by this research, it is not surprising that those ‘standards’ should include the maintenance of a full-time criminal investigation department along the lines initiated in the Metropolitan Police.

Finally the County and Borough Police Act of 1856 (19&20 Vic. c.69) ‘made it compulsory for all counties and boroughs to establish police forces’, as well as establishing an Inspectorate of Constabulary (HMIC). These Inspectors had, and still have, a programme of visits to police forces. They visit in order to assess whether or not the force should continue to receive the government funding that early became a major element in local police budgets. No police force could long withstand the threat of the withdrawal of government grant.

Inspections thus rapidly became the principal means by which the Home Office guided and shaped the development of the professional police service. Under penalty of loss of funding, HM Inspectors required every police force in Britain to accept responsibility for the investigation and detection of crime and the prosecution of criminal offenders, and to maintain a criminal investigation department for that purpose.

---

21 Chesney, K (1970) page 32
The Dual Role of Professional Policing

The preceding chapters complete the ‘simple, direct history...of the...British professional police service’ promised earlier. It has been established that the function of criminal investigation, identification, detection and prosecution formed no part of the original purposes of British professional policing. That task was added to the purely preventive and protective duties of Peel’s New Police at a much later date, thus creating the present dual crime preventive and crime detective role of the British police service. It has also been found that government through the agency of the Home Office originated, fostered and completed the transfer of responsibility for the investigation and detection of criminal offenders from the magistrates of the metropolis and their officers to the Metropolitan Police Force during the 1860s and 1870s. It then used the budgetary power inherent in its constabulary Inspectorate system to spread criminal investigation departments to every British police force.

The Home Office and the dual role

There can be little doubt when and how the functions, and then the role, of the British police service changed. It happened in the three decades between the passage of the Metropolitan Police and Metropolitan Police Courts Acts of 1839 and the ‘Turf Fraud case’ of 1877 with its consequence in the report of Ibbetson’s Home Office Commission the following year. In that period, Mayne’s 1842 ‘Memorandum relative to the detective duties of the police’ and Fergusson’s 1868 Committee laid a foundation for the detective within the police service on which Ibbetson’s Commission report built his stronghold in the Criminal Investigation Department. But it is also clear that neither Mayne’s Memorandum nor the Fergusson and Ibbetson Home Office inquiries were the cause of the addition of crime investigation, detection and prosecution to the functions of the Metropolitan Police and consequently the creation of a dual crime prevention and crime detection role for the whole British police service. They were merely landmarks in the process by which Home Office officials brought that change about without Parliamentary or legislative sanction.

Fortunately for those officials, and perhaps unfortunately for our criminal justice system, the public at large, then as now, showed little understanding of these matters and less interest in them. In the period under review crime and criminality were growing fast and the threat of the Fenians effectively neutralised all the old public fears about the development of a ‘spy system’ based on Peel’s New Police. The
creation of a body of detectives to supplement and complement the existing preventive and protective work of the constables of the Force seemed a natural and uncontroversial development. In reality however, the development was a transformation in which professional policing underwent major organisational and structural change in the 1860s and 70s, which greatly expanded both its purposes and its activities, without any correspondingly comprehensive alteration in the law. This is so even though the findings of the 1839 Royal Commission and Fergusson’s 1868 Report provided clear evidence that preparatory legislative action was needed. An examination of contemporary documents and records shows that responsibility for that departure from normal Parliamentary and democratic processes rests with Home Office, both politicians and officials. Those records also identify the principal actors in that irregular activity.

**Under-Secretary Lushington**

Of the Home Office officials in the period of the emergence of the modern police detective the most interesting in this regard is Liddell’s successor as Under-Secretary, Godfrey Lushington. Lushington qualified as a barrister in 1858, and joined the Home Office as its Counsel in 1869 just after the implementation of Fergusson’s Departmental report. He became Assistant Under-Secretary in 1876, this time just before the establishment of Ibbetson’s Committee. Finally he took the top job as Under-Secretary in 1885 before retiring ten years later in the calmer days of Colonel Sir Edward Bradford’s Commissionership.

Lushington occupied important and influential posts in the Home Office throughout the development and emergence of the professional detective. He was Legal counsel to the Home Secretary at the time of the first establishment of the Detective Branch in the Metropolitan Police. He was a senior member of the Office when the Force instructions relating to the appointment of those officers were drafted and published. As a barrister he was in a position to advise the Secretary of State about the legality of that action, and the transformation in the role of the police within the criminal justice system that it represented. Indeed, as Counsel to the Home Office that must surely have been one of his functions. But no direct evidence has yet been discovered to show that he made any such contribution.

We can be fairly certain however, that he did not advise *against* that significant development in the functions of the New Police. He certainly did not oppose or obstruct the expansion of the Criminal Investigation Department when he had the opportunity to do so as Under-Secretary in the later stages of his career. And he
showed no sympathy with the problems of the senior officers of the New Police, nor did he support their aims. On a personal level he could be extremely difficult. Sir Robert Anderson, Assistant Commissioner (CID) during the Whitechapel murders, records in his memoirs that, 'With his many excellent qualities Godfrey Lushington's intervention and influence as Under Secretary were generally provocative, and his manner irritating.' Coming from a fellow member of the London Bar, such a comment is more likely to be an understatement rather than an exaggeration of Lushington's attitude toward his professional police colleagues.

He was no friend to them as his correspondence with, and attitude toward, Commissioner Warren amply demonstrates. Indeed, Lushington's view was that the Commissioner of the Metropolitan Police should recognise and accept his, 'subordination to the Home Office'. His remarks in the internal minutes attached to Warren's resignation papers are particularly revealing in this respect, as has already been noted. Other examples of his unhelpful attitude toward his police colleagues are available in the public record. It is shown for instance in his dealings with Warren's claim for expenses on his taking up the position of Commissioner in 1886, and his comments on the contentious issue of military aid to the Metropolitan Police in February 1888.

The available Home Office papers do not record Lushington's attitude toward the specific issue of the performance of the 'detective duties' of the magistrates' officers by the Metropolitan Police Force. But his occupancy of the higher levels of the Home Office hierarchy coincided with the addition of a detective function to British policing and he must therefore at least have acquiesced in that fundamental change in the responsibilities of the police. During his bitter disputes with Commissioner Warren in 1887 and 1888 his fiercest comments on his adversary's behaviour are reserved to the moment when the Commissioner first turned his full attention to his Criminal Investigation Department. Warren wrote to the Home Office querying its origins and just two days later Lushington decided that a relatively harmless article by Warren in the November edition of Murray's magazine should be the subject of a confrontational admonition. He then chose to delegate that task to a junior member of his staff. The result was one that he must have been able to anticipate, and which he therefore must be suspected of having wished to provoke. At this distance in time from these events conjecture cannot be anything other than speculation, but

1 Anderson, Sir R (1910) page 129
2 Public Record Office HO 144/42763
3 ibid. HO 144/48409/2
4 ibid. HO 144/48043 Item 3
Lushington’s behaviour must open him to the suspicion that he was seeking to protect the detective department in the Metropolitan Police Force from too close public or parliamentary scrutiny.

Lushington, in his character, in his views, in his opportunities and by his actions appears to be the most likely candidate for the role of sponsor of the professional detective amongst the Home Office officials involved in that development. But he could not have succeeded in that purpose alone. The leaders of the professional police service also played a part.

The first Commissioners

Rowan and Mayne, the joint first Commissioners of the Metropolitan Police, unintentionally laid the first foundations for the modern police detective and his home in the Criminal Investigation Department. They did so in a campaign to eliminate all their competitors in the policing of the metropolis which successfully removed the 'Runners' employed by the magistrates and common informers from the capital's criminal justice system. The Commissioners regarded the suppression of these people as not only eminently sensible but also morally justified. In their view both groups contained individuals who, as the Eighth Report of the Royal Commission on the Criminal Law describes it, took advantage of the 'wide door to bribery, collusion and illegal compromises' left open by the absence of a public prosecutor. In seeking to do away with or replace such people the Commissioners clearly felt themselves to be performing a needed public service.

Unfortunately, the Commissioners never understood that, when performed with integrity, their targets played a vital role in the policing of the capital, and in the criminal justice system as a whole. In particular, the acquisition of reliable information about, and informants among, active criminals and their associates, and the development of an accurate understanding of the workings and interrelationships of criminal sub-cultures, matters in which both the 'Runners' and common informers had long experience and considerable skill, are an indispensable element in any effective system of crime detection and punishment. These duties could not be discontinued without effective replacement which, regretfully and due to the adverse attitudes of the Commissioners toward such work, was what happened after 1839. To that extent, Rowan and Mayne must bear some responsibility for the emergence of the dual role of the modern police service.

In their defence however, even when the Commissioners took positive action to introduce detectives into their Force in 1842 they did so reluctantly, under pressure
from the Home Office and as an experiment. In all, the direct contribution of the first Commissioners to the emergence of the police detective was either unintended or made under protest. At the very worst therefore, it was a mistake for which they should not be too heavily criticised.

**Henderson**

On the other hand, all the decisive steps in the appearance of the modern detective occurred in Henderson's time as Commissioner. He implemented Fergusson's recommendation for the formation of the first Detective Branch and was still in post when the Branch was expanded into a full-blown Criminal Investigation Department in 1878. Henderson was therefore the Commissioner who oversaw the incorporation of a criminal investigation and detection function into the role of Rowan and Mayne's New Police. On the evidence of his letter of 3rd March 1878 to Liddell, when he sought Home office authority for the employment of the detectives required to man the new Criminal Investigation Department created by C. E. Howard-Vincent, he did more than acquiesce in that development. He took an active part in it.

However, no direct evidence has been found to show that he either initiated or sponsored the creation of a Criminal Investigation Department within his Force. Examination of the relevant documents assigns that role to the Home Office and its officials. Henderson may therefore be able to make a mitigating plea of superior orders but he cannot escape all criticism. He has 'negative responsibility' i.e. his liability arises from his failure adequately to oppose the development.

Had Henderson anticipated and adopted Warren's stance toward his Home Secretary when the formation of a CID was first proposed in 1868, or when the 1878 Ibbetson Commission recommended the centralisation of the system of criminal investigation, he may have saved Rowan and Mayne's original design for the New Police. By adopting Warren's stoutly independent approach to the dictates of the Home Office he may at least have preserved the 'divisional' system. Its locally controlled investigation of crime as a discretionary activity for the police service might then have become the pattern for the development of modern policing. But he failed to oppose or expose the radical changes proposed by Lushington and the Home Office, of which he had full knowledge. On the same basis, he must also accept responsibility for his subsequent indifference to the enlargement in size and enhancement in status of the criminal investigation department within the Metropolitan Police with all that followed from it.

---

But Henderson's inactivity is not his only, nor even his most significant, contribution to the emergence of the detectives as an integral part of the modern police service. He has a personal and direct responsibility for the destruction of Rowan and Mayne's vision of the New Police as a purely protective and preventive force, and for its replacement by a definition of the role of the professional police service that includes the investigation and detection of criminal offenders. His direct culpability in this respect arises from his publication and promulgation of what later generations of policing professionals were to call the 'Primary Objects'.

The 'Primary Objects'

Some time after his appointment, Henderson put in hand work to codify and consolidate the growing number of instructions issued to the Force. For the first time since 1829 all the Instructions applicable to the work of constables were separated out and gathered together in a single book. Other, more general, Instructions to the Force were codified into a second, larger volume for the information and direction of senior ranks. Who, or what, first prompted this mammoth task is unclear, but the need for it is not. In his Report to the Home Secretary for the year 1872 Henderson mentions these two new volumes of instructions. He says that,

'A work of very considerable importance affecting the daily and hourly responsibilities of the Police has been completed during the year in the consolidation of all the Police Orders issued since the formation of the force in 1829 and now extant. They have been arranged under alphabetical heads and with a comprehensive index and will prove a great boon to the service generally...A small Instruction Book has also been prepared in concise form and issued for the use of candidates and constables, and a compendious Instruction Book bearing on the personal duties of Sergeants and Constables on matters connected with the general working of the Service. A copy will be supplied to every man.'

In contrast to the practice adopted by Rowan and Mayne, Henderson did not attach a copy of the contents of the new Instruction Books to his Annual Report to his Home Secretary for the information of Parliament. This is an odd, and unexplained, omission. His Annual Report for the year has no fewer than 54 Appendices on other, much less significant, subjects. The Home Secretary in post at the time was Henry

---

Bruce. Parliamentary Debates in the period give no indication that Bruce mentioned the new Instruction Book in the House, or even that he was aware of it.\(^7\)

**The 1873 Instruction Book**

It is fortunate for the history of the British police service that copies of Henderson’s Instruction Book for constables, first issued on 28\(^{th}\) April 1873, have survived.\(^8\) His Instruction Book is important because it contains the first fundamental departure from the 1829 definition of the role of the professional police set down by Rowan and Mayne with the ‘approbation’ of Robert Peel. Significantly, and in contrast to Rowan and Mayne’s invariable practice, the new definition does not form part of the main body of the Instructions. It appears as a Preface to them, a feature unknown in any earlier version. Its status is therefore, ambiguous. Whether or not this novel Preface is a General Instruction to the Metropolitan Police made and published under the Commissioner’s powers set out in the 1829 Act is uncertain. What is clear however, is that whatever its formal status Henderson’s statement of the role of his Force replaced Rowan and Mayne’s earlier Instruction on these matters since their version does not appear in the new codified and collected Instruction Book.

Rowan and Mayne derived their wording from the legislation that founded the Metropolitan Police Force. It was clearly a General Instruction to the Force and appeared in its proper place among their other Instructions. It said that;

> ‘It should be understood, at the outset, that the principal object to be attained is *the Prevention of Crime*.

To this great end every effort of the Police is to be directed. The security of persons and property, the preservation of the public tranquillity, and all the other objects of a Police establishment, will thus be better effected, than by the detection and punishment of the offender, after he has succeeded in committing the crime.’\(^9\)

Those words were ‘laid on the Table of the House’ and entered into the Parliamentary record. All subsequent versions of the Instructions to the Force issued in Mayne’s lifetime repeat them without variation.

By a subtle process of re-wording and re-arrangement of Rowan and Mayne’s original statement, the Preface to Henderson’s new Instructions abandons the principle that the

---

7 Parliamentary Debates (Hansard) *Third Series* vols. CCXIV, CCXV, CCXVI, CCXV, CCXVI and CCXVII
8 Metropolitan Police Instruction Book for the Government and Guidance of the Metropolitan Police Force (1873) Public Records Office, *MEPO 8/80*
9 Metropolitan Police Instructions, Orders &. &. (1829) *Metropolitan Police museum*
prevention of crime was always to be preferred to the detection of offenders. In its place is the view that the purpose of policing is both to prevent and to detect crime.

So was born the phrasing that every recruit to the professional police service was subsequently required to commit to memory. It was, and is, universally known to them as the ‘Primary Objects’ and was to be an unchallenged statement of the role of the British professional police service for more than one hundred years.

‘The primary object of an efficient police is the prevention of crime, the next that of detection and punishment of offenders if crime is committed.

To these ends all the efforts of Police must be directed. The protection of life and property, the preservation of public tranquillity, and the absence of crime will alone prove whether those efforts have been successful and whether the objects for which the Police were appointed have been attained.’

Taken at face value, it might be objected that the subtle change of wording between Rowan and Mayne’s definition of the purposes of policing and Henderson’s Primary Objects is of little significance, or even trivial. After all, Rowan and Mayne’s ‘route papers’ and ‘divisional’ systems assigned constables to the investigation of reports of crime and the detection of offenders. But the true nature and extent of the transformation in the functions and purposes of the professional police service represented by the Primary Objects, and its place as the first formal statement that Peel’s New Police now had a dual, two-function, role in British the criminal justice system, is not to be found in the words it uses but in its effect and consequences. Those are most clearly to be seen in the 1877 ‘Turf Fraud case’, already identified as a landmark event in the history of the police detective.

In publishing his 1873 ‘Primary Objects’, or allowing it to be published in his name, Henderson must accept a heavy responsibility of the destruction of the original purposes and functions of the New Police, and its replacement by the dual crime prevention and crime detection role that came to be applied to the modern British police service. But by what or on whose authority did he issue that pivotal change in the definition of policing?

The law and the dual role.

In 1873 the only proper category into which publication of Henderson’s ‘Primary Objects’ could fit was, as it always had been, Section 5 of the Metropolitan Police Act of 1829. That Section divides responsibility for the issue of instructions to the

10 Metropolitan Police Instruction Book etc.(1873). op cit, Preface
Metropolitan Police Force between the Commissioners and the Secretary of State, a duality of authority that is a feature of this Act.

Systematic division of power between a government minister and the head(s) of a public body is not just a quirk of this statute. It is an important principle of it that reflects contemporary concern to take every possible precaution to prevent the New Police becoming an instrument of government repression or of partisan politics. At the same time the legislators wanted to put the Secretary of State in a position to account to Parliament for the conduct of the new organisation. In drafting the Act an attempt was made to create a relationship between the Commissioners and the Secretary of State which met both objectives. The duality of responsibility approach is the chosen method. Unfortunately, as in the dispute between Commissioner Warren and the Home Office officials under Lushington, it left room for differing interpretations.

Section 5 of the Act empowered the Commissioner(s),

‘suspect to the approbation of one of His majesty’s Principal Secretaries of State,...[to]...frame such orders and regulations as they shall deem expedient, relative to the general government of the men to be appointed members of the Police force.’

The duality of responsibility of the Act is achieved in this section by the provision for retrospective ‘approbation’ by the Secretary of State of actions decided upon, or indeed already taken, by the Commissioners. There is no doubt that the addition of a full-time detective role along the lines of the functions formerly performed by the officers employed by the magistrates of the metropolis and by common informers to the duties of the constables of the Force (which is the effect of the ‘Primary Objects’) is a matter ‘relative to the general government of the men appointed to be members of the Police force’. It would seem that any such changes in the orders and instructions to the Force ought to originate with the Commissioners as Warren asserted during his dispute with his Home Secretary. Only then, under the duality of responsibility principle, need their Instruction be subsequently subject to approbation by the Secretary of State. This is not what happened with the ‘Primary Objects’.

In that case the process which led to the publication of that new definition of the purposes of policing began with the errors and omissions of the Metropolitan Police and Courts Acts of 1839. The consequent Home Office pressure on Mayne in 1842 resulted in his ‘experiment’ with a detective branch. On that base the 1868 Home Office Departmental Committee under Fergusson constructed the headquarters
Detective Branch with its sprinkling of full-time detectives on Divisions. Henderson, the Commissioner of the day, implemented those recommendations with no apparent enthusiasm, delegating the work to a subordinate, C. E. Howard-Vincent. Five years later Henderson published the 'Primary Objects', not because he deemed it expedient under his statutory powers, nor, it would seem, as a formal Instruction, but as an unprecedented Preface to a newly collated edition of the Force Instructions. This is neither the manner nor the process for the issue of instructions envisaged by the legislators. Publication of the Primary Objects did not result from a decision of the Commissioner either to announce or to establish a change in the nature of the functions of the Force. It merely expressed what had already long since taken place at the behest of the Home Office.

If that is a true account of the appearance of the 'Primary Objects', then those responsible could conceivably argue that it was not a 'general instruction' to the Force under the provisions of Section 5. That would also conveniently explain their decision to make the publication in a Preface and, incidentally, account for there being nothing in the public record to show that Henderson's redefinition of the functions of his Force received 'approbation' from the Secretary of State.

But on that interpretation the 'Primary Objects' is indeed not a lawful Instruction to the Force under the relevant legislation and cannot therefore, of itself, authorise the change in the nature and functions of the Metropolitan Police that it describes. And since the new Instruction Books contain no other description of the role and purpose of the Metropolitan Police, then after 1873 the Metropolitan Police Force and those parts of the emerging British police service that followed it as a model would be left with no authoritative description of its duties and responsibilities at all.

The opposite view, i.e. that the 'Primary Objects' is a general instruction to the Force under the Act, is equally problematic. The process by which the crime investigation and detection duties of the magistrates and their officers were added to those of the Metropolitan Police can readily be shown to have begun prior to the issue of the 'Primary Objects' - by at least five years. Consequently, any attempt to bring that new definition of policing within the scope of an instruction under the Act must involve some sort of reverse process in which the Home Office initiates and brings about a change in the duties performed by the constables of the Metropolitan Police that is then retrospectively formalised by an Instruction issued by the Commissioner. The problem with that process is first, that it is unprecedented, and second, that it is arguably also unlawful.
At the outset of Peel's New Police the process was indeed that all changes in the general Instructions to the Force originated with, and were proposed by, the Commissioners. Only afterward did they receive approbation by the Home Secretary. Parliamentary Papers include copies of all General Orders issued to the Metropolitan Police Force during the first two years of its existence. 11 Only one such Instruction issues directly from Sir Robert Peel. It refers to the arrangements for appointments to, and within, the Force, a matter reserved to the Secretary of State by Section 4 of the 1829 Act. That Section provides that, 'a sufficient Number of fit and able men shall, from time to time, by the direction of one of His Majesty's Principal Secretaries of State, be appointed as a Police Force for the' Metropolis. This is a specific power granted to the Secretary of State to give directions to the Force found nowhere else in the Act.

Parliamentary Papers also show how the founders of the New Police divided the responsibility for the issue of Instructions. Peel's only Instruction deals with the appointment of officers to 'superior rank'. Rowan and Mayne's Instructions include the original definition of the functions and purposes of the Force, as well as its founding structure and organisation. Mayne quite properly followed that precedent when he initiated the Instructions that formed the Detective Branch in 1842, albeit under pressure from the Home Office. He proposed an 'experiment' and his Home Secretary, Graham, then agreed to it.

For the sake of completeness at this point it should be said that even this seemingly proper first step in the introduction of the duties of the magistrates and their detective officers into the role of the New Police is open to question as a result of yet another curious quirk in the drafting of the 1839 Metropolitan Police and Courts Acts. Prior to the passage of those Acts, Rowan and Mayne had complained to the Home Office that the dual structure of the 1829 Metropolitan Police Act required joint action by both Commissioners in any and every case. They found this hopelessly complex and inefficient. They sensibly asked that the legislation be amended to allow one Commissioner to act on behalf of both. When the Metropolitan Police Act of 1839 was drafted a provision was included intended to that effect. The Interpretation Clause of the Act said, among other provisions, 'that all Things herein authorized to

---

11 Parliamentary Papers (505) XXIII.405 (1830) and (340) VIII.265 (1830-31)
be done by the Commissioners of Police of the Metropolis may be done by either of them."

The problem is that this Clause begins with the words ‘And be it enacted, That in the Construction of this Act’, and its relevant part includes the word ‘herein’. At the time of the passage of the 1839 Act it was not recognised that this form of words meant that the ‘single Commissioner’ provision applied only to those powers and duties of the Commissioners specified in the 1839 Act, and not those granted and given in 1829. Thus the Interpretation Clause did not apply to many of the most important powers of the Commissioners, including their authority to issue General Instructions to the Force; a category into which the setting up of a Detective Branch undoubtedly fell. And, as was noted in an earlier chapter, the letter of 1842 in which Richard Mayne acquiesced in the formation of a Detective Branch is signed by him alone.

The Home Office cannot claim to have been unaware of this additional Interpretation Clause problem. It was noticed in 1855 when the Law officers were asked to comment on a Memorandum from Richard Mayne asking whether it might be possible to divide the powers and duties of the joint Commissioners appointed under the Act of 1829. Mayne did not get on well with Charles Rowan’s successor, Captain Hay, and wanted to reserve all important decisions to himself. In dealing with that request (which the Home Office vehemently opposed) officials discovered, to their horror, that ‘acts must have been done by one Comm. over and over again without lawful authority’ due to the faulty drafting of the Act of 1839. The mistake was only finally corrected in 1856.

In sum therefore, the legislation and all precedent, including precedent in relation to the instructions on the employment of constables as detective officers, points in a single direction. It indicates that any general instruction to the Force ought to be proposed by, and originate with, both Commissioners and only afterward be approved by the Secretary of State. By that criterion only one step in the process that led to the formation of the Criminal Investigation Department in the Metropolitan Police was correctly taken, i.e. Mayne’s establishment of the Detective Branch in 1842. And even that action is open to question on technical grounds arising from the faulty drafting of the Interpretation Clause of the 1839 Metropolitan Police Act.

---

12 Metropolitan Police Act, 1839 (2&3 Victoria cap.47) section 78
13 Public Record Office OS 6093 item 12
14 ibid.
15 19 Victoria 2, c V (1856)
The problem with Henderson’s ‘Primary Objects’ and the revision of the definition of the purposes and objectives of policing that his new Preface to the Instructions to the Force represents is that, contrary to both legislation and all precedent, it is retrospective. It improperly purports to regulate changes in the ‘general government of the men appointed to be members of the Force’ that had already taken place, and which had not been originated by the Commissioners themselves.

The Commissioners and the Home Secretary

If it is accepted that Section 5 of the 1829 Act does not supply the necessary authority for the issue of Henderson’s Primary Objects then Section I of the Act is the only other possible source. As with Section 5, it displays a duality of responsibility. Its importance in this context justifies its extensive reproduction.

‘Whereas Offences against Property have late increased in and near the Metropolis; and the local establishments of Nightly Watch and Nightly Police have been found inadequate to the Prevention and Detection of Crime, by reason of the frequent unfitness of the Individuals employed, the Insufficiency of their number, the limited sphere of their Authority, and the want of connection and co-operation with each other. And whereas it is expedient to substitute a new and more efficient system of Police in lieu of such Establishment of Nightly Police within the limits herein-after mentioned, and to constitute an office of Police which, acting under the immediate authority of one of His Majesty’s Principal Secretaries of State, shall direct and control (sic) the whole of such system of Police within these limits. Be it therefore enacted by...That it shall be lawful for His Majesty to cause a new Police Office to be established in the City of Westminster and to appoint two fit persons as Justices of the Peace...to execute the Duties of a Justice of the Peace at the said office’.

Two things of significance arise from this preamble to the Act. First, the preamble describes the new organisation as being ‘in lieu of’ the Nightly Watch and Nightly Police of the metropolis. It does not replace the whole of the policing arrangements for the capital. In particular it will be remembered that the magistrates and their police offices, with their responsibility for the investigation of reports and allegations of crime, and the detection and prosecution of offenders, remained in place with all their powers and prerogatives specifically preserved in this Act. Clearly that has major implications for the range of activities that the new organisation had Parliamentary authority to perform.
Second, the preamble distinguishes between the power to take action in the new organisation and the authority required for that action. The Act puts the New Police ‘under the immediate authority’ of the Secretary of State. But it is the Justices of the new Police Office who act under that authority to direct and control the whole of the new organisation. The original Justices were Rowan and Mayne. Their successors are the Commissioners, including both Henderson and Warren, who inherited all their powers and privileges laid down in the Act. Such powers include their authority to issue such General Orders to the Force as ‘they shall deem expedient for rendering such Force efficient in the discharge of all its Duties’.

Whether or not Section I provides an authority for the changes in the duties of the Metropolitan Police Force that led to the ‘Primary Objects’ therefore depends on the relationship between ‘the immediate authority’ of the Secretary of State and the power of the Justices (‘Commissioners’) appointed to direct and control the Force. Unfortunately this is an issue on which the wording of the 1829 Act is imprecise. The first part of the Section 1, quoted earlier, goes on to say that the Justices appointed to the new Office to ‘execute the Duties of Justice of the Peace’ within it, should also execute ‘such other duties as shall be herein after specified, or as shall be from time to time directed by one of His Majesties Principal Secretaries of State...for the more efficient administration of the Police’.

The preliminary point to be made about this part of the Act is that it deals with the authority of the Secretary of State to alter the duties of the Commissioners. It does not refer to the duties of the constables they employ. Warren, in his dispute with the Home Office made the strong point that his constables had duties and responsibilities under the law with which he could not interfere. In addition there is an immediate limitation on the extent of the Secretary of State’s authority to change the duties of the Commissioner(s). It is that the change must be ‘for the more efficient administration of the Police.’ Thus any power of the Secretary of State to alter the duties of the Force as a whole under this Section will have to be exercised through the Commissioners and apply to the administration of the Force. Under the statute he cannot directly command the Force or give orders to any of its constables, as Warren rightly pointed out in his resignation letter in November, 1888.

Turning then to the powers of the Commissioners, Section 1 also deals with their status and the extent of their authority. In effect it is a proviso limiting their powers as Justices of the Peace for the metropolis. It says,
"that no such person shall act as a Justice of the Peace at any Court of General or Quarter Sessions, nor in any Matter out of Sessions, except for the Preservation of the Peace, the prevention of Crimes, the detection and committal of offenders, and in carrying into execution the purposes of this Act".

The 1829 Act thus makes an important distinction between the Commissioners and the other Justices appointed for the metropolis. The Commissioners and their constables are not just another magistrates' police office along the lines first developed by the Fieldings and later enshrined in the Act of 1792 and its successors. In confirmation of that important distinction the 1829 Act also says at Section 42 that, 'Provided always, and be it enacted, that nothing in this Act contained shall affect or alter' the legislation dealing with the Police Offices of the Metropolis under the control of the magistrates. The effect of these provisions is to prohibit the Commissioners from exercising any of the criminal investigative, detective and prosecution powers and functions granted to the other justices of the metropolis i.e. the magistrates of the police offices.

That view of these issues is also clear in the Parliamentary record. Parliament renewed, unaltered, the separate police offices legislation from which the London magistrates derived their powers and authority at the same time as it passed the Metropolitan Police Act. The obvious intent is to create two different types of 'police' establishments in the metropolis, with different duties and responsibilities. Indeed, and in confirmation of the point, the legislation dealing with the Police Offices specifically mentions the 'apprehension of offenders' in setting out the duties of the magistrates of the metropolis and hence, of the officers they employed. Section 15 of the original 1792 Act which first set up the Police Offices provided that,

"the Justices to be appointed may...retain and employ a sufficient number of fit and able men...to act as Constables...which said constables...shall obey all such lawful commands as they from time to time receive from the said Justices for the apprehending [of] offenders"

The constables employed by the Commissioners under the 1829 Metropolitan Police Act were not given this duty to apprehend offenders. Equally significantly, nor did the 1829 Act bind the constables of the Metropolitan Police to obey the commands of their Commissioners for that, or any other, policing purpose. Which clearly suggests that Parliament regarded the New Police as 'constables' in the Saxon tradition, rather
than intending them to be agents of the Justices (Commissioners) on the Norman model of the Bow Street Runners and other magistrates officers.

Later Acts in the regular series of renewals of the Police Offices legislation make that distinction even more explicit. For example, an Act passed in 1823 (3GeoIV cap.55), empowered the Chief Magistrate at the Bow Street Police Office to administer an oath to the officers employed in his Office to:

'execute the Office of Constable...and each of such Persons, being sworn, shall have Power to act as a Constable for the Preservation of the Peace, and for the Security of Property against felonious and other unlawful Modes of obtaining the same'

The Commissioners of the new Metropolitan Police Force and the magistrates of the police offices both well understood the statutory distinction between them. Rowan and Mayne could not, and did not, take up the investigative and detective functions of magistrates into reports of crime either when offered to them by the 1838 Select Committee or after the 1839 Acts had 'discontinued' the Bow Street Runners. Rowan and Mayne never knowingly permitted the constables of the Metropolitan Police to associate with criminals or otherwise undertake the detective duties of the magistrates officers. At the very earliest stage of the New Police, when Peel’s Metropolis Police Improvement Bill was before Parliament, his Prime Minister, the Duke of Wellington, said in the House of Lords in answer to a question during the debate in June 1829, that, 'The Justices (Commissioners) were to have no power beyond what was necessary to protect the peace of the country and to carry this measure into effect.'

A Select Committee of Parliament, of which Sir Robert Peel was a member (the 'Popay' committee), also considered the issue of the employment of the constables of the Metropolitan Police in plain clothes on crime detection in 1833. That Committee resolved,

'That it is the opinion of the Committee that with respect to the occasional employment of policemen in plain clothes, the system as laid down by the heads of the Police Department affords no just matter of complaint while strictly confined to detect Breaches of the Law and to Prevent Breaches of the Peace, should those ends appear otherwise unattainable;'

16 Parliamentary Debates (Hansard) New Series vol. XXI col. 1752
17 Parliamentary Papers (1833)(627) Vol. XII page 407
In addition, the first book of Instructions issued to Force by Rowan and Mayne told each constable they he was only responsible ‘for the security of life and property, within his Beat, and for the preservation of the peace...during the time he is on duty.’

It must be clear then that, even if they wished, neither the Secretary of State nor the Commissioners of the Metropolitan Police had authority under the relevant legislation to direct the constables of Force to undertake the criminal investigative and detective functions and duties of the magistrates of the metropolis or their plain-clothes officers. The conclusion must be that Henderson’s action in publishing his 1873 ‘Primary Objects’ was unlawful or at the least ultra vires given that by the time the ‘Primary Objects’ appeared the magistrates of the metropolis no longer exercised their former duties in this respect.

The Courts

Additional evidence to support that conclusion is available elsewhere in the history of the criminal justice system. Throughout the nineteenth century the courts refused to recognise Peel’s ‘New police’ as having any part to play in the identification, detection and prosecution of offenders, apart that is from bringing immediately detained persons before the magistrates and giving evidence at any subsequent trial. For example, ‘In 1838 Patterson J threatened with dismissal from the force an officer in the habit of interrogating prisoners.’ and, ‘Prior to Jervis’s Act [Indictable Offences Act, 1848], a justification offered by the judges for [that] rule was that police questioning was a usurpation of the function of the examining magistrate, without any of the safeguards which attended a magisterial examination.’

Following the passage of Jervis’s Act the judges modified their view of this type of police activity, but they still did not approve of it. They argued that since the courts could not question a prisoner (which was the case at the time), no inferior officer of justice should do so. At the same time;

‘Another question was that of how far [police] officers might legitimately question persons against whom there was suspicion, but who had not yet been arrested. To this the judge’s answer was that, once an officer had taken the decision to take a suspect into custody, it was not proper for him to put questions to him. Until that point was reached a suspect might be questioned

18 Metropolitan Police Museum Instructions, 1829, page 38
19 Bentley, D (1998), page 230
20 ibid.
The essential point, for the purposes of this discussion of the lawfulness or otherwise of the adoption of the criminal detective duties of the magistrates and their officers by the constables of the Metropolitan Police, is that at the time those duties were being transferred to the Force the judges did not regard its constables as having any special role to play in the detection and prosecution of criminal offenders. That is so even after the passage of Jervis's Act in 1848 which somewhat loosened that restriction on the conduct of constables. Had the judges considered Peel's New Police to have any special or particular lawful authority to investigate crime or pursue criminals they would certainly have mentioned that special position in their judgements on such matters. No such statutory or legislative provision has been discovered that predates the publication of the Primary Objects in 1873.

Conclusion

There are three grounds therefore, on which to argue that both the publication of the 'Primary Objects' and the creation of a Criminal Investigation Department (CID) within the Metropolitan Police that it represents was either unlawful or ultra vires. First, no Commissioner of the Metropolitan Police originated or deemed expedient either step under the provisions of the Act of 1829. Second, the relevant parts of that Metropolitan Police Act strictly limit the power of the Secretary of State to change the duties of the Commissioners. Specifically, he is precluded from directing them to take up the criminal investigative and detective functions of the magistrates of the metropolis. Finally, neither the Secretary of State nor the Commissioners had power to direct the constables of the Metropolitan Police to take up any duty other than those laid down in the Act of 1829. Nevertheless, despite these apparent statutory prohibitions, the criminal investigation and detection duties of the magistrates emerged as the pre-eminent activity of the Metropolitan Police. The evidence is that it did so not because the Commissioners either wished it or deemed it expedient, but rather as a response to overwhelming pressure from the Home Office. No record has been found of that change in the functions of the professional police service ever having been brought to the attention of Parliament for approval or debate. Nor was it included in legislation. The decision to transfer the detective duties of the magistrates officers to the constables of the Metropolitan Police appears to have made entirely within the Home Department. It was then implemented using the devices of

21 ibid. page 232
internal departmental committees and an administrative change in the form of the Instructions issued to the Force rather than by any publicly accountable means. The evidence is that the Home Office then deliberately screened those actions from scrutiny by Parliament.

**Toward the present problems of British policing**

However, the intention is not to condemn those responsible. The methods used in this research ‘recognise that only a minority of social institutions are consciously designed while the vast majority have just “grown” as the undersigned results of human actions.’ Hence the working assumption is that criminal investigation departments in their modern form emerged within the professional police service as a result of attempts by hard-pressed and often ill-informed officials and politicians to find solutions to the problems of crime and disorder associated with industrialisation and urbanisation. No large-scale social movement, conspiracy or process is identified as accounting for the development. And no motive has been attributed to the actors involved other than a simple desire to deal with the immediate problems they faced. The contrast with the approach of much of the existing commentary and academic literature to this subject is, in this respect, complete.

---

Findings and Conclusions

The preceding chapters describe the process by which the British professional police service developed its present dual role. That dual role consists of two functions:

a) uniform patrolling to prevent and deter crime and disorder and protect citizens from harm ('peacekeeping' by 'peacekeepers'); and,

b) plain clothes work to investigate incidents and reports of crime and identify criminal offenders with a view to their prosecution and punishment ('crime detection' by 'detectives')

The first function was laid down by Charles Rowan and Richard Mayne, the joint first Commissioners of the Metropolitan Police, in 1829. The second was added by Commissioner Henderson's 'Primary Objects' Instruction to the Force in 1873. It should not be assumed that either the existence or the nature of the dual role of modern police officers is widely recognised or understood, even within the profession of policing. Henderson's definition is commonly attributed to Richard Mayne even in otherwise credible and reliable academic literature on British policing, and confusion on the issue can be found at the highest levels of the policing profession. For example, in a Handbook on the Principles of Policing issued to every Metropolitan Police officer in 1985 the Deputy Commissioner of the Service quotes Rowan and Mayne's 1829 version, while in a Foreword his Commissioner quotes Henderson's 1873 Primary Objects. Both give their source as 'Sir Richard Mayne, 1829'.

Clearly, this research opens a new perspective on the history and development of the professional police service in Britain and raises a range of previously unconsidered issues and problems. Not all of them can be addressed here. The findings and conclusions drawn are therefore focussed on the research purpose set out in the Abstract and Introduction.

Findings

The following findings have been made:

1 e.g. Smith, P.T. (1985) Chapter 3 page 61/2; Moylan (1929) Chapter II page 34
2 Laughame, A (1985) page 9/10
3 ibid. page 6
i) At the foundation of the British professional police service in 1829 the function of the investigation of criminal offences to detect offenders in order to prosecute them before the courts was the prerogative and responsibility of justices of the peace and any officers they employed for that purpose.

ii) The legislation of 1829 on which the professional police service was founded did not remove that function or responsibility from the justices or their officers, nor did legislators intend that the constables of the newly-formed professional police service should take it up.

iii) That function and responsibility of the justices and their officers for the investigation and detection of crime was subsequently transferred to the professional police service by administrative means and without parliamentary or other legislative authority in the period prior to 1888.

iv) That transfer was effected primarily by the Home Office and its officials and only secondarily by the Commissioners of the Metropolitan Police Force.

v) As a consequence, the definition of the role, purposes and activities of the professional police service was improperly changed from Rowan and Mayne's original 1829 peacekeeping definition to the present dual peacekeeping and detective role first published in the 'Primary Objects' Preface to Henderson's 1873 edition of the Instructions to the Metropolitan Police Force.

Conclusions

The broad finding of this thesis is that the British police service has, improperly and, as will be argued, to its detriment, been given a dual role consisting of both peacekeeping and detective functions. In the light of that finding the present role, organisation and management of modern policing have been examined and the following four specific conclusions drawn.

1. **On corruption**

   The addition of crime detection duties to its peacekeeping purposes and functions has introduced persistent corruption into British professional policing.

This conclusion reflects the first of the reservations expressed by Mayne in his 1842 'Memorandum relative to the detective powers of the police' when his Force
was under pressure by the Home Office to take up the detective functions of the magistrates and their officers. He said then,

‘That these [former Bow Street detective] officers had advantages in tracing out some sorts of cases is true: - the Commissioners believe it is well known, that, by at least some of them, a communication was kept up with thieves or their associates, from who occasionally they received information that led to detections, that might not otherwise have taken place. Upon the propriety of returning to such a system, the Commissioners will make no observation, as, in a moral point of view it has been repeatedly denounced.’

Despite Mayne’s misgivings the Home Office built the Criminal Investigation Department with its apparatus of criminal intelligence, investigation and detection, into the Metropolitan Police Force. The effect, evidenced by the 1877 ‘Turf Fraud case’, was to draw Peel’s New police into the ‘detective duties’ of the magistrates’ officers and common informers, so opening a nation-wide door to the corruption also associated with those activities.

Mayne’s prediction that the involvement of the New Police in detective work would create a potential for corruption was consistently supported by the early Commissioners of the Metropolitan Police. Mayne’s successor as Commissioner, Edmund Henderson, shared his view and said so when giving evidence to Ibbetson’s Home Office Departmental Committee in 1878. Sir Charles Warren, who followed Henderson into the Commissioner’s Office, was never directly concerned with the issue of corruption, but he embarked on a review of the whole idea of a criminal investigation department within the Metropolitan Police Force in 1888. He promised that its ‘whole [future] position would be reviewed’ if its performance did not improve. Only his precipitate and premature resignation prevented him from fulfilling that ambition.

Even the normally supportive London ‘Times’ gave early warning of the corrupting effect detective work was likely to have on the professional police service. In a leader published while the ‘Turf Fraud’ conspiracy case was before the courts, ‘The Times’ said:

‘A Detective Force may be necessary, but, we repeat, it is a very unpleasant necessity, and the danger that attends its employment is clear...If the temptation of his [the detective’s] life are too strong for him and he forgets to any degree his true allegiance, the mischief he may do is well nigh
incalculable. The most potent weapon of justice is turned against justice. It is the rogue who escapes and the honest man who are baffled and confounded. The want of security, the dread of the presence of a spy, is transferred to the wrong camp. All this may happen at any time, and from the nature of the case must happen some time."

One of the most effective recent Commissioners of the Metropolitan Police, and a man whose intellectual standing and devotion to the integrity of the service is undoubted, was Sir Robert Mark. He confirms the truth of 'The Times' prediction in his autobiography published in 1978, one hundred years after Ibbetson's Report on the 'State, Discipline and Organisation of the Detective Force'. Having dealt with some of the more serious allegations of corruption made against the modern police service, Sir Robert reminds his readers of his Dimbleby Lecture given at the British Broadcasting Corporation's headquarters five years earlier, on 3rd November 1973 almost exactly one hundred years after the publication of Henderson's 'Primary Objects'. Dealing with the criminal prosecution process he then said:

'It is hardly surprising that a policeman's belief in its fairness should decline as he gathers experience, or that he should be tempted to depart from the rules. The detective is the person most affected because it is he who regularly bears the brunt of the trial process. In theory he's devoted only to the cause of justice. He likes to think of himself as having no personal interest in acquittal, conviction or sentence and that his career is not affected by the outcome of his cases. In practice this is a gross oversimplification. Most detectives have a strong sense of commitment. It would be unnatural if they did not feel personally involved in some of their cases and it would be untrue to suggest that they are not sometimes outraged by the results. All are under occasional temptation to bend the rules to convict those whom they believe to be guilty...A few may sometimes be tempted also to exploit the system for personal gain. A detective who finds general acceptance of a system which protects the wrongdoer can come to think that if crime seems to pay for everyone else, why not for him?"

4 The Times 15th August 1877 page 9 col. e
5 Mark, Sir R (1978) page 137
Confirmation of Sir Robert’s views and conclusions is readily available in the steady flow of popular literature on cases of police corruption. Equally, present-day researchers in policing have found that the culture and organisation of policing as it relates to crime detection can inculcate an ethos of corruption and deviance among police officers. As Punch (1985) says:

‘dilemmas in producing satisfactory work – owing to pressure for results, ambiguous legislation, vulnerability to legal sanctions and precarious bargains with criminals, informants and lawyers – can lead to short-cut methods, lies, covering-up, falsification of evidence, and intimidation of suspects. These...can aid in deciphering deviance as rooted in the everyday, organizational reality of policing.’

The problem of corruption resulting from the dual peacekeeping and detective role of the modern police service extends beyond the behaviour of individual officers. The dual role also acts to exacerbate and magnify corruption’s damaging effects. Any disrepute associated with detective work inevitably contaminates every police officer, not only throwing doubt on the credibility of all police evidence in cases before the courts, but also discrediting, and thus weakening, the standing, status and credibility of those engaged in the peacekeeping and protective activities of the service.

2. On the management of policing

A dual peacekeeping and detective role generates irresolvable problems for the efficient and effective management of policing.

This conclusion is suggested by the second of the reservations raised by Mayne in his ‘Memorandum’ of 1842. When discussing the difficulties that an addition of the detective duties of the magistrates officers to the responsibilities of his Force would bring, he said;

‘The Commissioners are aware that there is some danger in establishing such a Branch of Police, to whom the duties of a detective character would more immediately belong; of causing a relaxation of the exertions of the Police in general for the same purpose, which have hitherto been successful to so great an extent; - and it may be difficult to define the exact point of

---

7 Punch (1985) Introduction, page 3
time and the exact circumstances under which the advantage of pursuit by the whole body of the Police is to be abandoned.’

In the context of his time and as he understood the responsibilities of his ‘street police’, Mayne’s purpose in these remarks was to draw attention to the problem he would have in deciding when the ‘quick and fresh pursuit’ of an offender by his patrolling constables should be abandoned and the case handed over to a specially employed detective. But he also here first raises a wider problem for the management of a dual role police service that remains troublesome to this day. How much time and effort should the police devote to the prevention of crime, and how much to its detection?

That this is a real and continuing problem for police managers, and that it has adverse effects on the efficiency and effectiveness of policing has, in recent times, been most notably confirmed by Lord Scarman in his Report of an enquiry into the Brixton Disorders in 1981 (Cmnd. 8427).

In his Report Lord Scarman identifies and discusses the dual role of the modern police service. He says:

‘the primary duty of the police is to maintain “the Queen’s Peace” which has been described as the “normal state of society”...since it is inevitable that there will be aberrations from normality, his second duty arises, which is, without endangering normality, to enforce the law’

Lord Scarman, following it would seem the lead of his colleagues among the Law Lords,9 describes the second of the two functions of the police as ‘law enforcement’ rather than ‘crime detection’. However, his ‘aberrations from normality’ will include, and indeed largely consist in, breaches of the criminal law. The view of the dual role of the police developed by this research is therefore narrower than, but consistent with, Lord Scarman’s.

In the next paragraph of his Report, Scarman confirms that difficulties are caused by the existence of the two police functions he identifies.

‘The conflict which can arise between the duty of the police to maintain order and their duty to enforce the law, and the priority which must be given to the former, have long been recognised by the police themselves,

---

8 Scarman (1981) paragraph 4.57
9 R. v. Metropolitan Police Commissioner ex parte Blackburn (1968) 1 All E.R. page 769 at l, and 777 at D
though they are factors to which commentators on policing have in the past often paid too little attention.'

The conclusions of the Scarman Report then go on fully to substantiate Mayne's view that serious problems are caused by requiring the police to act both as peacekeepers and as detectives. Lord Scarman's finding in relation to the Brixton disorders was that a police operation to identify, detect and arrest street robbers, which was fully justified in crime reduction and detection terms, was also the principal cause of a three-day riot that caused widespread destruction of buildings and other property, as well as hundreds of injuries to police and public. The Scarman Report is therefore, a most authoritative account both of the inherent conflict between the police activities of crime detection on the one hand and peacekeeping on the other, as well as of the priority of peacekeeping in the present dual role of the service.

In its internal structure the modern police service further illustrates the perceptiveness of Scarman's findings and Mayne's earlier advice. Every modern police force can be seen to be broadly divided into two friendly but competing camps. One, the uniform branch, is composed of officers engaged in peacekeeping, crime deterrence, and community protection; the other, the criminal investigation department (CID), holds plain clothes detectives waging war on crime and criminals. As Banton (1964) has described it;

'A division is...apparent between specialist departments (detectives, traffic officers, vice and fraud squads, etc.) and the ordinary patrolman. The former are 'law officers' whose contacts with the public tend to be of a punitive or inquisitorial character, whereas the patrolmen...are principally 'peace officers' operating within the moral consensus of the community'"10

The problem not fully discussed by Banton or other commentators is that the two groups have conflicting objectives, tactics and strategies. Detection and prosecution as an objective depends upon criminals committing, or at least being allowed to attempt to commit, crimes. As Richard Mayne put it in his Memorandum in 1842 referred to earlier, 'detective duties',

'causes the officers to allow a number of cases to remain unnoticed in order that now and then in a case of great notoriety, the parties or their associates whose cases have been connived at on other occasions, may be induced to give the information.'

10 Banton, M (1964) page 6
Public protection and peacekeeping on the other hand, aims to deter or prevent all crime in any circumstances. A dual peacekeeper and detective role thus creates a perpetual dilemma for the managers of the police service since there is no easy compatibility between police actions designed to keep the peace and those intended to detect and arrest active criminals; an issue exemplified in Lord Scarman’s Report. Equally, the selection, training, equipment, deployment and even clothing and hours of duty required for peacekeeping and public protection are entirely different from those needed for the detection of criminal offenders. Moving individual police officers from one task to another is therefore extremely difficult and impossible at short notice. Certainly no individual officer can perform both tasks effectively at one and the same time. As a result, behind a public front of unity peacekeepers and detectives engage in incessant inter-departmental competition for influence over force policy and access to resources. This is not just an example of corporate politics. It is a manifestation of the deep structural divide recognised by Lord Scarman.

When public or politicians are consulted on these matters however, they invariably demand that the police service provide both effective peacekeepers and successful detectives. Indeed, they find it difficult to distinguish between, let alone prioritise, the two activities. That is because, first, insofar as they are aware, no other agency can, or ever did, supply either essential service; and second, there is a vague, unexamined but generally accepted feeling that the two activities are connected in that they are both assumed to contribute to the reduction of crime and disorder, and to the control of criminality. It is thus the duality of the policing role which generates the insoluble dilemmas faced by the managers of the police service. How are they to decide the priority to be given to each function? Which should come first, catching criminals or keeping the peace? And, to return to Mayne’s question with which this section began, in pursuing both when should one activity stop and the other start?

3. **On police and community relations**

A dual peacekeeping and detective role hinders the creation and maintenance of good relations between police and public.

As a result of the development of their dual role in the period after 1839 professional police officers now act both as guardians and as prosecutors of the public they seek to serve. In that dual role the police service is required to present itself as responsible both for the protection and support of all citizens, and
for the detection, prosecution and punishment of those same citizens if and when they commit crime. The two functions are understandably difficult to reconcile, both by police officers and by the public they seek to serve, creating formidable obstacles to mutual trust and the free flow of advice and information. Examples include not only the Brixton disorders in London in 1981 on which Lord Scarman reported, but also the recent difficulties faced by the Metropolitan Police in dealing with the murders of Stephen Lawrence and Damilola Taylor and their continuing aftermaths, and those still afflicting the Royal Ulster Constabulary (now the Police Service of Northern Ireland) as a result of its investigation of the Omagh bombing.

The Stephen Lawrence Inquiry conducted by Sir William MacPherson of Cluny, whose Report was presented to Parliament in February 1999, is a good illustration of the complex, interlocking community relations difficulties created for the police service by its dual role. Sir William's terms of reference were:

'To inquire into the matters arising from the death of Stephen Lawrence on 22 April 1993 to date, in order particularly to identify the lessons to be learned for the investigation and prosecution of racially motivated crimes.'

Two issues relevant to this research arise from the Inquiry. First, the Inquiry is a further example of the negative effects the dual role of the police can have on its relationship with its diverse communities. It shows that damage can be done to the peacekeeping function of the police by an adverse feedback from a failure in its detective activity, especially where that activity relates to crime across social or ethnic divisions.

Second, the Lawrence inquiry seems to have taken little or no account of the effects and consequences of the duality of the police role in reaching its conclusions and recommendations. This is surprising since the Inquiry quotes the Scarman Report extensively and uses Lord Scarman's observations and conclusions to sharpen and justify many of its criticisms of police action. It is unfortunate therefore, that Sir William did not give full weight to Lord Scarman's warning that the dual role of the police and the conflicts that can arise from it are factors to which commentators on policing have in the past paid too little attention.

--

11 Macpherson (1999)
12 ibid. Chapter 46
That oversight must raise the possibility that the Lawrence Inquiry may have reached judgements about the conduct of the Metropolitan Police as a whole, and of the behaviour of individual officers carrying out their separate peacekeeper and detective functions, without taking full account of the difficulties caused by their dual role. That does not however, reduce the significance of the Stephen Lawrence Inquiry as an indicator of the severe difficulties the police have in establishing and maintaining good relations with minority communities. In fact and rightly, the Inquiry paid considerable attention to the broad issue of police/community relations.

Commenting on those aspects of the Inquiry, John Lea first notes that:

‘Scarman...called for training aimed at an understanding of the cultural background of ethnic minority groups...Macpherson found however, 18 years later that not a single officer questioned...in 1998 had received any training of significance in racism awareness and race relations.’

But he then recognises that, ‘The [police] strategy of liaison with ‘respectable’ members of minority communities stretches back to the Community Relations Councils of the 1960s’

In effect, MacPherson found and reported that, after more than 30 years of effort the leaders of the police service had failed to solve, or even much ease, the problem of the relationship between the police service and all the diverse communities it seeks to serve. At best there had been no identifiable improvement. A fuller appreciation of the problems caused by the dual role of the police may have helped the Inquiry to explain why this is so.

The Scarman Report and the Lawrence Inquiry are important landmarks in the history of the relationship between the modern police service and its public. Both enquiries arose directly from the detective function of the police. Both reach highly critical conclusions about the effect of that activity on the peacekeeping work of the police service and its relationship with its communities. John Lea’s criticisms shows, if nothing else, how long and yet how ineffectively the professional police service has struggled with that seemingly intractable problem.

13 Mathews and Young (2003), page 53
14 ibid. page 54
4. **On performance measurement**

Dual peacekeeper and detective functions militate against accurate or reliable measurement and assessment of police performance.

The debate on police performance and its measurement began in earnest with Prime Minister Thatcher’s ‘value for money’ revolution during her premiership in the 1980’s. Under that regime both government and public began to require the police service account for the resources allocated to the support of its crusade against crime. The demand was for measurable results from the public money spent on policing. Departing from every precedent, Thatcher’s Cabinet set out to link police budgets to performance. In retrospect most chief police officers and other informed observers will recognise that the turning point for policing came in November 1983 with the publication of Home Office Circular number 114/83, entitled ‘Manpower, Effectiveness and Efficiency in the Police Service’.

This Circular made the first explicit connection between the resources devoted to policing and the performance of the police service in dealing with crime and disorder. With its appearance the less rigorous regimes previously enjoyed by many Chief Constables ended. From now on they would have to show that their, ‘force’s existing resources are used to the best advantage’ before making any application for an increase. To do so they would have to satisfy Her Majesty’s Inspectors of Constabulary, all of them ex-senior Chief Constables and Home Office appointees, that ‘resources are directed in accordance with properly determined objectives and priorities’.

Later the Circular reinforced the point saying that,

‘The Home Secretary therefore attaches importance to the determination of objectives and priorities in the police service, and to the allocation of resources and the deployment of police and civilian manpower in a way that will most effectively and efficiently secure those objectives and priorities.’

Sir Lawrence Byford, then Her Majesty’s Chief Inspector of Constabulary, spoke about the impact of the Circular on Chief Constables in a seminar at the National Police College the following year. He said that, from the issue of the Circular,

---

15 Home Office Circular 114/83 *para.4*
16 *ibid. para.6*
'It follows that there needs to be thorough planning, and effective deployment of manpower in accordance with those plans, and, above all, on results - on getting them and, equally importantly, on being able to demonstrate that you have got them.'

The decades of the 1980s and 1990s saw the full flowering of the resultant 'policing by objectives' management style in the police service, and the consequent attempt to develop performance measurement for policing. To begin, chief officers and others turned to Henderson's 1873 Primary Objects as the accepted definition of what the police service seeks to achieve. By that definition the primary purposes of policing are to prevent crime, and to detect and punish offenders. Unfortunately even the Home Office had elsewhere already come to a conclusion reached by Rowan and Mayne in 1838; the prevention of crime was not something wholly within the power of the police to achieve.

It had done so in another equally important circular issued in 1984 dealing with the Home Office view on the problem of crime prevention.Echoing, without acknowledging, Rowan and Mayne its first paragraph reads,

'A primary objective of the police has always been the prevention of crime. However, since some of the factors affecting crime lie outside the control or direct influence of the police, crime prevention cannot be left to them alone. Every individual citizen and all those agencies whose policies and practices can influence the extent of crime should make their contribution. Preventing crime is a task for the whole community.'

A clear implication of this Circular is an acceptance by the Home Office that no police force or unit is in control of, or able directly to influence, all the factors that determine the level of crime in the area for which it is responsible. Yet its earlier (1983) Circular proposed levels of crime as a fair or proper measure of police efficiency or effectiveness, and demanded that improved performance against crime should be a significant criterion in the allocation of resources.

Coincident with the issue of these two Circulars, a Prosecution of Offenders Bill, also sponsored by the Home Office, was before Parliament. Its effect (perhaps unintended) was further to reduce the opportunities to measure police performance. The Bill contained radical proposals. Despite all the effort made

---

17 National Police College 21st Senior Command Course Seminar, Closing Address, 22nd August 1984
18 'Crime Prevention', Home Office Circular 8/1984
by the Home Office to transfer the detective duties of the magistrates officers to
the professional police in the 1860's and 1870's, the Bill now proposed to
remove the conduct and control of prosecutions of offenders against the criminal
law from the functions of the police. An independent Crown Prosecution Service
would undertake the process of bringing offenders before the Courts.
Unfortunately the prosecution and punishment of offenders are two of the very
few aspects of policing whose outcome can be measured with any accuracy. The
Home Office decided to remove that responsibility from the police just when the
service most needed a simple and reliable means to justify its budgets."

The search for a new role

The outcome of the pressure of the Thatcher Government for financial efficiency
and effectiveness in policing was to propel the service into a search for a new
definition of its role, one that would carry it forward into its new performance-
related environment. The crusade for economy became a search for purpose
simply because neither chief police officers nor Home Office ministers and
officials were able to derive practical measures of police performance from the
Primary Objects. Yet another new definition of the purposes of policing was
needed

Unfortunately, the issue of what to include in such a definition and what to omit
degenerated into a long and sometimes acrimonious dispute. The Association
of Chief Police Officers (ACPO) and other interested parties examined it
exhaustively. The debate generated so little light that a high-powered Home
Office Committee was appointed in December 1993, under the title of the
'Review of Police Core and Ancillary Tasks', to clarify the question. The
Committee’s terms of reference were;

‘To examine the services provided by the police, to make
recommendations about the most cost-effective way of delivering core
policing services and to assess the scope for relinquishing ancillary tasks’

In the Introduction to its Final Report, the Review Committee refer to the White
Paper on Police Reform (Command no. 2251). The Committee notes that the
White Paper says,

‘that the Government considered that it would be useful in future to define
more clearly what the police service should regard as its core

19 Prosecution of Offenders Act, 1985
20 Home Office (1995) page 7, para. 1.2
responsibilities and those things which are to a great extent ancillary to their main responsibilities.\(^{21}\)

In effect, in 1993, one hundred and sixty-four years after its first foundation, government decided to try to lay down precisely what the professional police service ought to be doing, and what role it should play in society.

The outcome may be predicted. After two years' work the Committee concluded its proceedings in 1995 with 26 recommendations in 'specific areas...[of policing]...where some change in working arrangements look potentially beneficial to the police service in freeing up resources which could be used in other ways.'\(^{22}\). However, the Committee had to admit that;

'6.5 It is not expected that any of the changes recommended - even if they were all to be implemented - would alter the nature of the police service offered to the public. The changes under discussion here are often concerned with inter-agency relationships rather than with the police service's relationship with the public.'\(^{23}\)

Regrettably, the Review Committee could not complete its task of defining the core responsibilities of the police as the Government's White Paper had hoped. The consequences of that failure are best seen in the development of individual statements of purpose and values by police forces. The reaction of the Metropolitan Police, the founding model for the professional British police service, illustrates the spread and depth of the resultant confusion about the role of the police. Rowan and Mayne's Metropolitan Police Force is now the Metropolitan Police Service. It was among the first to issue a 'Statement of Common Purpose and Values' to fill the need for a new basis on which its performance might be publicly assessed. The current definition of the role of the Metropolitan Police as it is reproduced on its website \(^{24}\) is:

---

\(^{21}\) ibid. \textit{para. 1.1}  
\(^{22}\) ibid. Conclusions page 25, \textit{para. 6.1}  
\(^{23}\) ibid. \textit{para. 6.5}  
\(^{24}\) http://www.met.police.uk/about/mission.html
**MPS mission, vision and values**

**MAKING LONDON SAFE FOR ALL THE PEOPLE WE SERVE**

<table>
<thead>
<tr>
<th>Our Mission</th>
<th>Our Values</th>
<th>Our Vision</th>
</tr>
</thead>
<tbody>
<tr>
<td>To make places safer</td>
<td>To treat everyone fairly</td>
<td>To make London the safest major city in the world</td>
</tr>
<tr>
<td>To cut crime and the fear of</td>
<td>To be open and honest</td>
<td></td>
</tr>
<tr>
<td>crime</td>
<td>To work in partnership</td>
<td></td>
</tr>
<tr>
<td>To uphold the law</td>
<td>To change to improve</td>
<td></td>
</tr>
</tbody>
</table>

Such statements clearly do not provide any sort of measure by which police management decisions and actions can be compared, assessed or objectively judged, nor do they assist in estimating the relative efficiency or effectiveness of various police units. In truth, they share all the limitations of the 'Primary Objects' without its admittedly vague and impractical ground-level priority-setting benefits.

While police forces were struggling with the problem of the definition of their role, government pressed on with the specific issue of police performance measurement, but now from a different direction and with another perspective. In 1997 a Labour government came to power after 13 years of Thatcher’s Conservatives. It made a radical and energetic start to its first term of office. Among its reforming initiatives was a review of the public services, and particularly their funding arrangements, under the title of the Comprehensive Spending Review (CSR). Included in that review was the police service and its host department, the Home Office.

However, despite the appearance of a vast and ever-growing monitoring and budgetary bureaucracy within the police service and more than five years of the CSR, identifiable progress in terms of the development of useful, applicable and reliable measures of police performance has been negligible. Even to discover where government is in its search for measures of the value for money gained from spending on policing presents a formidable and frustrating challenge.

Thirteen policing performance indicators are indeed to be found on the current Home Office website in the section entitled 'The National Policing Plan 2003 –
For the purposes of this discussion the precise wording of those indicators is unimportant. What matters is the source or sources from which they are drawn and on which they depend. That information is not included in the Plan itself. It is to be found in the Home Office Annual Report, and specifically in the performance measures agreed with the Treasury and set for the achievement of the Home Office’s Public Service Agreement (PSA) ‘targets’ 1 and 2 relating to policing.

There, finally, it will be discovered that the base on which the current system of measurement and assessment of police performance principally rests is three-fold: the British Crime Survey; the Home Office Statistical Bulletin, and the annual report of Her Majesty’s Chief Inspector of Constabulary, all of which have been available, and have been used for these purposes since before Prime Minister Thatcher’s launch of the idea of value for money in policing in 1983. Four ‘other indicators’ are mentioned in the National Policing Plan but for various reasons they are not included in the performance measures used for PSA ‘targets’ 1 and 2. In effect, no new measures of the value for money obtained from the public funds devoted to policing have been developed or agreed in the entire twenty-year history of the policy.

The lack of progress in the search for a viable and useful replacement for the ‘Primary Objects’ which this reveals needs no further emphasis. What can be said however, is that the present annual police planning and reporting process, with its heavy focus on crime detection and prosecution, is a complex, convoluted bureaucracy that must represent a serious, continuing, but not yet assessed or measured, drain on police manpower and resources. Those with sufficient stamina and determination can best gain a sense of the full extent of the burgeoning weight of that bureaucracy by a visit to the ‘Police Best Value Indicators 2003/04’ page of the Home Office website.

In all, a survey of recent developments in the management of the police service identifies its dual role as a significant and continuing obstacle to the measurement or assessment of police efficiency and effectiveness. That objective requires, as a preliminary, a clear understanding of what the police service can do, and a statement firmly based on that understanding which sets out what it is then expected to achieve. Unfortunately, neither that understanding nor any policing
objective that can properly be derived from it presently exists in any generally agreed or accepted form.

It remains now to consider and develop recommendations for action that can provide a solution to the problems and issues just discussed.
15

Recommendations

The conclusions set out in the preceding chapter identify four major problems presently facing the British police service. They are; persistent incidents of corruption; inefficiency in the management of policing; difficulty in maintaining long-term good relations between police and public, especially in the case of minority communities; and, lack of effective and reliable measures of police performance. This thesis attributes those problems wholly or in part to the dual peacekeeping and detective role of the police. An outcome of this research is therefore a prediction that the major problems it identifies will persist so long as British police officers retain their present dual role. An appropriate, acceptable and effective end to that dual role is therefore the objective of the recommendations presented.

Policing reform

In view of the primacy and primordiality of peacekeeping in the functions of British policing identified by this research, action to end the dual role of modern police service should involve the removal of its detective function as defined. What is required for a resolution of the problems now facing the police service is a return to an option that was available to the Home Office in 1839. Government should accept the recommendations the First Report of the Royal Commission on the Establishment of an Efficient Constabulary Force, appoint a public prosecutor and revert to Rowan and Mayne’s 1829 purely peacekeeping definition of the role of the police.

The effect of that reform would be to give back to the police service its intended original role. It would keep the peace, prevent crime and disorder, protect citizens from harm, and respond to calls for assistance from the public. In the tradition of their Saxon constable forbears the overriding duty of police officers, at all times and in all circumstances, would be to safeguard the persons and property of all citizens. In that role police officers would continue to have the ‘quick and fresh pursuit’ duties described by the 1839 Royal Commission and will respond to reports of crime from the public. Their duty to prevent crime would be restricted to the ‘preventable’ category adopted by Peel’s New Police, as described by Mayne in his evidence to the 1833/4 Select Committee on the Police of the Metropolis on 2nd July 1833, i.e. they would be held accountable only for
those crimes or offences that could have been prevented by a body of uniformed patrolling constables.

Those immediate duties would mark the limit of police responsibility for the control of crime and criminality and involvement in the prosecution of offences against the criminal law. Police officers would seek to detain offenders only where they are present or immediately identifiable. Even then, the police would only take that action where it was needed to keep the peace or to protect the rights and liberties of other citizens. Consideration would have to be given to whether the reformed police service will need to be equipped with specific powers of enquiry to carry out that limited involvement in the detection of offenders.

Responsibility for the subsequent investigation of reports or allegations of crime, however defined and from whatever source, and for the identification, detection and prosecution of offenders against the criminal law will revert to its Norman origins with government, which will be required to identify or create agencies to undertake all the processes required, including gathering intelligence on crime and active criminals, and the cultivation and management of informants. Like their predecessor magistrates in the old police offices, those bodies will be able to employ, control and direct agents to carry out those tasks. Existing professional detectives will no doubt provide an ample pool of trained and experienced investigators from which these agents can be recruited.

Those new criminal investigators will not need the status of sworn constables, nor any of the individual discretionary powers of arrest, investigation or search presently granted to police officers. The agencies that employ them can readily supply, control and supervise any authority they may need to gather information, cultivate informants, interview witnesses, detain suspects, etc., and to search for and seize evidence. The final element in a properly reconstructed peacekeeping and criminal justice system is therefore, a government agency responsible for the investigation of crime and the identification and prosecution of offenders against the criminal law. The one remaining need is for the appointment of a public prosecutor.

The necessity for such an appointment in an emerging industrial, urbanised and democratic society has long been recognised. It was noticed by the 1839 Royal Commission on the Establishment of a Constabulary Force, and the 1845 Eighth Report of the Royal Commission on the Criminal Law emphasised the damage done to the ‘due administration of criminal justice’ by the absence of such an
official. Both also noted the opportunities presented for corruption. Parliament cannot claim that the appointment of public prosecutors is unprecedented or that it has had no opportunity to consider the proposal. In 1856 a Parliamentary Select Committee on Public Prosecutors looked at the criminal justice systems in America, Scotland and Ireland. It recommended that,

‘agents shall be appointed ... for the purpose of preparing and conducting prosecutions to the time of trial, ...The duty of such agents should be to prepare and conduct prosecutions through the stages preliminary to trial. Where it comes to their knowledge that an offence has been committed, and that no steps have been taken to bring the offender to justice, it will be their duty to take the necessary steps for apprehending or for otherwise bringing the offender before a magistrate.’

Nothing came of the Select Committee’s proposal when a Bill to implement it was put before Parliament. The Prosecution of Offenders Act of 1879 which later established the post of Director of Public Prosecutions did not address the issue and was only a limited measure in this respect. It confined the Director to a mainly supervisory role in the conduct of prosecutions by the police service and others. Under the reforms proposed here a public prosecutor’s role would be to undertake the investigation of all reports and allegations of crime, including those reported by the police where their ‘quick and fresh pursuit’ was unsuccessful. The public prosecutor’s duty will be to identify and detect offenders, and to prepare and undertake all criminal prosecutions in which there is a public interest.

Present-day police officers will not readily abandon functions and duties that, by long use, have become their exclusive domain, and which the public instinctively looks to them to provide. Nor will government easily accept that a public prosecutor, or some other agency subject to Parliamentary scrutiny, should take responsibility for the investigation of reports of crime and the identification, detection and prosecution of criminal offenders. Yet the proposal that the police should hand their detective function to a public prosecutor is not as revolutionary as it may seem. Recent developments in the British criminal justice system have all been in that direction.

1 Report from the Select Committee on Public Prosecutions (1856) Parliamentary Papers (1856) Vol. VII page 351
The Crown Prosecution Service

The emergence of the Crown Prosecution Service (CPS) and the creation of national criminal investigative and intelligence bodies has already removed large areas of criminal investigation, intelligence and detection from the hands of local chief police officers. Units controlled, directly or indirectly, by government ministers already have many of those functions. The penetration of the CPS back down the line of investigation into the offices of local police detective departments grows ever deeper. It would be a bold, or foolish, detective today who did not ensure that he had cleared his methods with his local CPS office before embarking on any major investigation.

A report on the CPS by Sir Iain Glidewell in May, 1998 clearly sought to move the British prosecution service further in exactly that direction. Sir Iain and his Committee recommended the amalgamation of some of the functions of the CPS with police administration units. The aim was that the laying of a formal charge against an offender would mark the point at which responsibility for the case passed to the CPS. His Report says;

'Such a single integrated unit, which we have called a Criminal Justice Unit, could be either a police unit with one or more CPS lawyers working permanently in it, or a CPS unit with some police staff. We firmly recommend the second option.'

Following a recommendation by Lord Justice Auld, the Crown Prosecution Service conducted an experiment in May 2003 involving six police force areas in which Crown Prosecutors took responsibility for charging suspected offenders, rather than allowing those decisions to be made by police officers. Conviction rates rose and the number of cases that collapsed or were abandoned at trial fell. The experiment is now to be extended to the whole of England and Wales. These proposals of the CPS, and their associated developments show that the British criminal justice system is already moving in the direction proposed here.

As a postscript to this section of my Recommendations, it was reported during the last stages of preparation of this account of my research that the Home Secretary proposes to rename the Crown Prosecution Service, the 'Public Prosecution Service'.

---

2 The Times 28th May 1998 page 12
4 The Times 13th May 2003 page 9
Recommendations

Service'. The reason given was that the new name was likely to make the purpose of the organisation clearer in the public mind.

A Renewed Police

The proposed new structure for British criminal justice will simplify and clarify the system. It will remove a major source of corruption from a vital public service. At the same time a clear distinction will be created between the agencies responsible for the prevention of crime and disorder and the protection of the public, and those charged with the identification and punishment of criminal offenders. It will thus provide a better basis on which to develop measures of the efficiency of the criminal justice system as a whole. Both government and the public should be able to judge whether the police service makes effective use of the growing sums of public money entrusted to it. No such judgement is possible while the police are required to pursue the conflicting aims of protecting citizens from crime, and of detecting and prosecuting them when they commit it.

The sequence of events leading to a reform of the police must begin with an open discussion whose aim should be to establish a new consensus on the functions and purposes of the modern police service. No such public discussion has taken place since the 1840s. Government ministers and those who advise them can give structure to the debate by reopening the work abandoned by the Home Office Review of Police Core and Ancillary Tasks. The purpose will be to produce a clear and agreed statement of the proper duties and functions of a reformed police service. That is likely to trigger some interesting exchanges, particularly in view of the effects of government's continuing Comprehensive Spending Review. Because it must be clear by now that no-one can expect the police to bear responsibility for both peacekeeping and the punishment of crime and criminality in our society. Nor can the value of the work of police officers be judged by their effect on levels of crime.

The way forward

The way forward in the control and reduction of crime in British society lies in the removal of the police service from its present position as primary agency in the identification, detection and prosecution of criminal offenders. Exactly what might then be expected of a newly focussed police devoted solely to peacekeeping and the protection of citizens awaits the conclusion of the debate and discovery process just advocated.
However, whatever may be the outcome of that public debate, reform of policing should never go further than that required to bring it fully into line with the needs of the public it serves. The Royal Commission of 1839 better than any later commentator understood the purposes and functions of a truly preventive police. Among the Conclusions to its First Report the Commission says,

‘the main purpose of a preventive police [is] the protection of private individuals in the enjoyment of their rights against infractions by depredators and others’

In our times the inclusion of ‘and others’ should strike an especially resonant note. It reminds us of the vital importance to the health of our form of democracy of the operational independence of the police service from any outside influence other than the law itself. Including and especially government and its agents.

---

Publication

On the advice of my supervisors and with their encouragement and support I have taken steps to expose the main themes, findings, conclusions and recommendations of my thesis to review by informed practitioners of policing and others academically or otherwise active in the field.

The Criminal Law Review.

In 2002 a two part article outlining my main ideas was published in the Criminal Law Review under the title 'Detecting Crime'.

Part I; 'Detection and the Police' appeared in the May edition on pages 379 to 390, and

Part II; 'The Case for a Public Prosecutor' in the July edition on pages 566 to 577.

I am not aware, as yet, of any adverse or dissenting comment arising from either article. Copies of those articles, as published, are attached.

Centre for Studies in Policing, Canterbury Christchurch University College.

As a consequence of the appearance of my articles I was invited by Dr. Dominic Wood to address students taking a Batchelor of Science degree in Operational Policing at the Centre for Studies in Policing at Canterbury. I attended a weekend study course on 31st May 2003 and spoke to some 20 to 30 students. Most were serving police officers or members of police civil and support staffs. I understand that my talk was well received, and while questions were asked no serious objections to my research finding or conclusions were raised either by students or members of the staff of the Centre. I am informed that my articles are included in reading lists for the course.

National Police Training Centre, Bramshill.

Bramshill House near Hook, Basingstoke in Hampshire is the site of what was formerly called the National Police College, and remains the premier training centre of the British police service. Selection for and attendance on its Command course is a requirement for promotion to the highest ranks of the service. On 19th February 2003 I spoke to the Librarian at Bramshill, Peter Levay, and confirmed that my articles were available in the National Police Library. He told me that they were 'very popular' with students attending the Centre. Again, as yet I have
not been made aware of any adverse reaction to my articles either from officers attending courses at the Centre or from its staff.


On 20th January, 2002, during the consultation period on the White Paper on Police Reform entitled 'Policing a New Century: a Blueprint for Reform.', I submitted comments on the proposed Police Reform Bill based on my research. My submission was acknowledged by Mr. Ben Bradley of the Police Reform & Bill Unit who informed me that my 'comments have been noted and will be given careful consideration by Ministers.' A copy of my comments, as forwarded, is attached.

There is however, nothing in the Police Reform Act, which received Royal assent on 24th July 2002, to indicate that my comments had any effect on the drafting of the Bill.

**Letters to 'The Times', London**

During the period of my research letters based on my findings were published in the London 'Times' on:

- 29th December, 2000
- 30th January, 2002
- 18th February, 2002
- 20 April, 2002
- 27th April, 2002
- 25th September, 2002
- 22nd September, 2003
- 24th January, 2004, and
- 10th April, 2004.

Apart from the irrelevant and incoherent correspondence such letters seem to attract, reaction has been generally supportive and, as yet, neither critical nor dismissive of the points made.
PAGE
NUMBERING
AS ORIGINAL
Detecting Crime Part I: Detection and the Police

By Lawrence T. Roach, QPM

Summary: The Metropolitan Police Act of 1829 specifically precluded Robert Peel's New Police from any involvement in the investigation and detection of crime. It is contended in this article that the subsequent imposition of those duties on the Metropolitan Police by the Home Office in the 1860s and 1870s was both improper and an error. In particular, a pattern and precedent was thereby set for the British police service with damaging consequences.

Peel's New Police

When Robert Peel rose in the House of Commons at 3 pm in the afternoon of Wednesday April 15, 1829 to speak in support of his Metropolis Police Improvement Bill, he did not intend to disturb the power and prerogative of the magistrates of the metropolis. The Bow Street Chief Magistrate, Henry Fielding, had first recruited six Westminster householders in 1750 to act as his agents in his responsibilities under the common law to investigate crime and detect criminal offenders. The Bow Street Runners, as they quickly became known, developed a considerable reputation in the identification, detection and pursuit of criminals, and Magistrates Police Offices on Fielding's model were established throughout London following the passage of the Middlesex Justices Act in 1792. The Offices and their plainclothes officers enjoyed a monopoly as the only professional detectives available in the capital. Peel's Metropolis Police Improvement Bill did not touch that monopoly, or the special position of the detective officers acting under the magistrate's authority.

This is made abundantly clear; first, by the preamble to the Metropolitan Police Act (10 Geo IV cap. 44), which identifies the capital's system of parochial watchmen as its target, saying:

"Whereas Offences against Property have late increased in and near the Metropolis; and the local establishments of Nightly Watch and Nightly Police have been found inadequate to the Prevention and Detection of Crime, . . . And whereas it is expedient to substitute a new and more efficient system of Police in lieu of such Establishment of Nightly Police within the limits herein-after mentioned, . . . Be it therefore enacted . . . " (etc. etc.);

and second, in section 42 of the Act which:

©Sweet & Maxwell
"Provided . . . that nothing in this Act contained shall affect or alter . . . (3 Geo IV cap. 55) . . . or . . . (6 Geo IV cap. 21) . . . ",

i.e the statutes renewing, continuing and expanding the investigative and detective powers of the magistrates of the metropolis and their officers first set out in the Act of 1792.

Peel intended to apply a unified body of full-time paid constables to the problems of peace-keeping and crime prevention in the capital. His speech to Parliament in support of his Bill shows that he meant to substitute his new body for the disorganised and disreputable rabble of locally appointed watch and ward. His was not therefore, the revolution in policing subsequently attributed to him. He neither intended, nor did he achieve, a radical alteration in the pattern of peacekeeping and crime control in the capital. He merely reformed one failed part of it—the system of parochial watch and ward.

Indeed, if there can be any doubt about Peel's intentions in this respect in 1829, 10 Geo 4 cap. 45 dispels them. That Act emanated from his Home Department and passed into law on the same day (June 19, 1829) as his Metropolitan Police Act. Its purpose was to continue uncharged for yet another three years the Police Offices Act which was the successor to the original 1792 Middlesex Justices Act. Parliament thereby preserved and continued all the rights, status and privileges of the Magistrates Police Offices in the metropolis at the very moment it introduced the New Police.

By their actions the first joint Commissioners appointed by Peel to command the new Metropolitan Police Force, Charles Rowan and Richard Mayne, confirm that the New Police had no role in the identification, detection or prosecution of criminal offenders. In their first Instructions to the Force in 1829, issued with the "... approbation of the Secretary of State for the Home Department. . . ", they adopt an entirely preventive view of the purposes of a professional police establishment. They say1:

"It should be understood, at the outset, that the principal object to be attained is 'the Prevention of Crime'.

To this great end every effort of Police is to be directed. The security of person and property, the preservation of public tranquillity and all the other objects of a Police establishment, will thus be better effected than by the detection and punishment of the offender; after he has succeeded in committing the crime."

They then go on immediately to make their intentions and ambitions unmistakable:

"This should constantly be kept in mind by every member of the Police Force, as the guide for his own conduct. Officers and Police Constables should endeavour to . . . render it extremely difficult for any one to commit a crime within that portion of the town under their charge . . . The absence of crime will be considered the best proof of the complete efficiency of the Police . . .

1 Metropolitan Police Instructions Orders etc. (September 1829) pages 1 and 2. Metropolitan Police Museum.

© SWEET & MAXWELL
Identical versions of that definition of policing appear in the 1836, 1851 and 1862 revisions of those Instructions.\(^2\) Nothing in the wording trespasses on the functions of the magistrates and their officers. The Magistrates Police Offices continued to be responsible for "... the detection and punishment of the offender after he has succeeded in committing the crime ...", a function that Rowan and Mayne explicitly excluded from the activities of their Force.

**The Royal Commission of 1839**

Confirmation of the legal position of Peel's New Police in the criminal justice systems is also to be found in the work of the Royal Commission appointed in 1836 "to inquire as to the best means of establishing an efficient Constabulary Force in the counties of England", whose First Report was published on March 27, 1839, 10 years after the foundation of the Metropolitan Police Force. Among many other things that report told Members of Parliament was that, due to the passage of time, constables, including those employed in London by Rowan and Mayne, no longer had any independent legal power to make even "preliminary inquiries" into cases appearing before the magistrates. Under the heading "Abandonment of the principle of preliminary inquiry",\(^3\) it said that:

"... it appears to be highly desirable that additional powers for securing important evidence should be given (to constables) by the legislature, and that the principle should be uniformly put into practical operation by virtue of a legislative enactment."

If therefore, Parliament ever intended Rowan and Mayne's constables to take up the "inquires" into criminal cases performed by officers acting under and with the authority of the magistrates, the findings of the 1839 Royal Commission showed that legislative action was required to give them the power to do so.

In addition the same Royal Commission said that, if police forces on the Peel model were to be generally established in Britain, they strongly recommended "the appointment of public prosecutors ... to prosecute those cases in behalf of the community at large 'in which no individual has any special interest, and in which the community has a special interest of its own, superadded to that of individuals'.\(^4\) The Royal Commission clearly considered the new constabulary forces they proposed to establish on the Metropolitan model to have no role in those matters.

**1839 - Acts and consequences**

While the Royal Commission was at work and before it produced its First Report, the policing arrangements for the Metropolis once more came onto the Parliamentary agenda. This time the emphasis was on the legislation supporting the activities of the Magistrates Police Offices of the Metropolis, and the detective officers they controlled. By now the constables of Rowan and Mayne's Metropolitan Police

\(^2\) Metropolitan Police Instructions Orders etc. (February 1, 1836 et seq.) Public Record Office MEPO 8/2, and Metropolitan Police Museum.
\(^4\) ibid, page 100, at page 94 para. 114.

© SWEET & MAXWELL
Force had gained the support of the vast majority of Londoners and their Parliamentary representatives, while the Bow Street Runners and the other magistrates' officers had developed an unsavoury reputation for corruption and collusion with criminals. When, in 1837, a Select Committee was appointed to inquire into the Police Offices its remit was to do so "... with a view to improvement of the same."5

The changed circumstances created by the success of the Peelers, the decline of the Runners and the imminent expiry of the Police Offices legislation allowed the 1837 Select Committee to embark on a comprehensive review of the whole of the policing arrangements for the Metropolis. The members determined to raise the status of the magistrates, confine them to purely judicial functions, and to do away with their investigative and detective officers. They found an ally in Edward Gibbon Wakefield, Esq. whom they "... called in; and Examined ..." on June 1, 1837.

Wakefield thought the Metropolitan Police Force to be effective in, "... maintaining order, in preventing nuisances, in driving out of sight many evils which still exist ...".6 But he did not think it had had any effect in rooting out the, "... prompters of crime ... ", The Chairman asked Wakefield:

"There being, therefore, so many fertile sources of crime in the metropolis, is it not desirable that some much more efficient means of detection should be afforded?—(Wakefield) Most desirable, as it appears to me; for although one cannot say that the detection of crime in London is exactly nobody's business, still it is very difficult to point out whose business it is; if a person is robbed in London, it seems to be nobody's business but his own; at least there seems to be no public functionaries whose business it is to detect the person who commits that crime ... the new system (i.e. Peel's New Police) appears to me to be almost as deficient as the old one as to the means of detection; ... 0

Rowan and Mayne confirmed Wakefield's account of the role of their constables in their evidence to the Committee on March 9, 1838.8 However, they then injudiciously and unnecessarily added their personal view that the uniformed patrolling activity of their "street police" was both preventive and detective in its effect. They told the Select Committee that their patrolling officers not only deterred criminals, but that they also often arrested offenders at the scenes of crime or shortly afterward. Unfortunately, the Select Committee put these somewhat boastful remarks together with Wakefield's evidence to conclude that it could safely do away with the magistrates' offices and leave the whole of the control of crime and criminality in the capital to Rowan and Mayne's men.

Accordingly, with the support of Parliament, that is what the Committee set out to do. The outcome was the passage of two Acts in 1839, the Metropolitan Police Act and the Metropolitan Police Courts Act. Critically, section 5 of the Metropolitan Police Courts Act transformed the officers employed by the magistrates into door keepers and security guards, with no detective or investigative powers. Unfortunately, as will shortly appear, sections 11 and 12 of the Metropolitan Police Act merely directed Rowan and Mayne to ensure the attendance of a "... sufficient

---

5 Select Committee on the Metropolis Police Offices (1837) Parliamentary Papers (1837/38) (451) Vol. XV pp. 309 et seq.
6 ibid. page 433 at para. 1192.
7 ibid. page 437 at para. 1205.
8 ibid. (1838) page 462 at para. 1088.

© SWEET & MAXWELL
number ... " of their constables to attend on the magistrates " ... for the purpose of executing such Summons and Warrants as may be directed to them ... ". These sections also provide that only constables of the Metropolitan Police could execute such warrants and summonses in the metropolitan police district. By neutering the magistrates' detective officers these provisions consigned Henry Fielding's innovations, including the Bow Street Runners and their imitators, to history.

The problem with this legislation is that neither the Metropolitan Courts Act nor the Metropolitan Police Act of 1839 deal with the issues raised by the First Report of the 1839 Royal Commission on the need for wider powers for constables if they were to replace the magistrates officers, and for the appointment of a public prosecutor should they do so. This was despite publication of the Royal Commission's First Report during the passage of the Acts, and in defiance of Mr Wakefield's evidence, generously quoted by the Select Committee. No preliminary or preparatory legislative action therefore took place to empower Rowan and Mayne's men to carry out inquiries into reports of crime, or for them to undertake the investigative and detective duties hitherto performed by the Magistrates officers, before the Bow Street Runners and their imitators were "discontinued" in 1839. That error was compounded when no-one troubled to tell Rowan and Mayne they were now the only ones left to carry on that vital, and troublesome, duty in the capital. For their part the joint Commissioners of the Metropolis made no move to do so. Three years later that problem began to come to a head.

The "experiment" of 1842

In 1842 the near-revolutionary Chartist movement reached one of its periodic peaks. Against that background Mayne wrote a Memorandum dated June 14, 9 to the then Home Secretary Sir James Graham, as a response to some quite fierce criticism of the Metropolitan Police Force. However, his subject was not the performance of his Force against the public order threat posed by the Chartists. It was its handling of a sensational murder case.

The offender, Daniel Good, had escaped after having been briefly in the custody of one of Mayne's constables. He then remained at liberty for two week despite his guilt and identity being widely known. Mayne complained that the publicity given to the case had; " ... assumed to show a want of skill in the Metropolitan Police and a defect of general organisation applicable to detective duties ... "10 In particular Mayne wished to rebut assertions of the: " ... greater efficiency of the Bow Street officers ... "

He pointed out, in a passage that is as relevant today as it was in 1842, that the employment of his officers on such duties would bring into his Force the corruption associated with the activities of the old Bow Street officers. He said:

" ... That these (Bow Street) officers had advantages in tracing out some sorts of cases is true: the Commissioners believe it is well known, that, by at least some of them, a communication was kept up with thieves or their associates,

9 Memorandum relative to detective powers of police (June 14, 1842). Public Records Office HO45/OS.292/1.
10 ibid, page 2.
11 ibid, page 10.
from whom, occasionally they received information that led to detections, that
might not otherwise have taken place... (however)... such an understanding
between the officers of the Police and criminals in practice, causes the officers
to allow a number of cases to remain unnoticed in order that now and then in
a case of great notoriety, the parties or their associates whose cases have been
connived at on other occasions, may be induced to give the information.

That the thieves will not continue to act on such a system, unless they find
it upon the whole for their common advantage, will readily be believed..."^{12}
(emphasis added)

Having made that powerful, and still relevant, point Mayne went on to raise a
second important issue. He said that:

"... The Commissioners are aware that there is some danger in establishing
such a Branch of Police, to whom the duties of a detective character would
more immediately belong; of causing a relaxation of the exertions of the Police
in general for the same purpose, which have hitherto been successful to so great
an extent; — and it may be difficult to define the exact point of time and the
exact circumstances under which the advantage of pursuit by the whole body
of the Police is to be abandoned; ..."^{13}

In this passage Mayne raised a second fundamental difficulty created by the
formation of a full-time, specialist detective branch within the professional police
service. Mayne asked how he was to decide, in any particular case, when the
preventive effort of his officers should stop and their detective work start. In so
doing he also raised a wider and still unresolved question. How much time, effort
and resources should the professional police service put into peacekeeping and
protecting citizens from harm, and how much into investigating reported crimes in
order to identify and prosecute the criminals responsible?

In sum, Mayne's letter told his Home Secretary that detective duties would bring
the corruption associated with the old Bow Street Runners into his Force. At the
same time it would make it impossible ever again to focus his constables on their
peacekeeping role. Nevertheless, as a result of the errors and omissions of the 1839
Acts, he now had no option other than to propose that he should set up a small, and
strictly controlled, full-time detective branch at Scotland Yard. It was a proposal
that:

"... the Commissioners submit for the decision of Sir James Graham, how far
it may be desirable as an experiment to try the effect of such a plan..."^{14}
(emphasis added)

The Fergusson Committee of 1868

There matters rested for some 25 years. In that period Mayne, who became sole
Commissioner shortly after the retirement of Rowan in 1850, developed and
enhanced a "Divisional" system of crime investigation in which local Superin-
tendents were given discretion to employ a few of their constables in the detection

^{12} ibid, pages 11 to 12.
^{13} ibid, page 15.
^{14} ibid, page 17.

© SWEET & MAXWELL
of local crime on a temporary (normally monthly) basis, as and when circumstances demanded.

Then, in 1867 with public agitation over the growing threat of the Fenians at its height, Gathorne Hardy (later Earl Cranbrook), the Home Secretary, was "bearded in his office" by protesters pleading for commutation of the death sentences of three condemned members of the movement. He immediately determined to increase the Metropolitan Police Force by one thousand constables, and to use the opportunity to strengthen its ability to identify, detect and prosecute those engaged in "treasonable conspiracies", particularly the Fenians. Unfortunately Mayne's opposition to his Force having any involvement with such work was predictable, well known and immovable. He had once promised a Select Committee, on his honour, never to employ his men in plain clothes as "... spies to pry into people's private actions...".15

Hardy found a solution to his problem by appointing Sir James Fergusson, MP, to head an inquiry ostensibly concerned only with the structure and organisation of the Metropolitan Police. He made the inquiry an internal or Departmental committee directly under his control, reporting to him rather than to Parliament. Fergusson's 1868 Home Office Departmental Committee noted the existence of Mayne's small group of headquarters detectives and his "Divisional" system of crime investigation. However, it found no statutory or other formal regulatory basis for the performance of any of these duties by the constables of the Metropolitan Police Force. The Committee reported that; "In the original constitution of the police no provision was made for the establishment of such a force...".16 However, the Committee went on to accept that what it called; "... Obviously necessity..."17 had led to a gradual increase in the level of crime investigation and detection activity undertaken by the Metropolitan Police.

The Departmental Committee did not explore or set out the nature or extent of that "obvious necessity". It simply reported Mayne's reluctantly introduced headquarters branch as a result of his 1842 letter, without further explanation. The conclusion is inescapable. As late as 1868 both the Home Secretary of the day and the officials who supported him were aware that there was no legal or statutory basis for the permanent employment of Metropolitan Police constables in any form of plain clothes detective work, let alone the specialised investigative and detective duties formerly performed by the magistrates' officers.

Nevertheless, the bulk of Fergusson's Report went on to deal with its covert purpose; the creation of a centralised detective branch to combat conspiracies, insurgency and the Fenian threat. Despite there being nothing in their formal instructions from the Secretary of State to authorise it, and without adducing any substantial argument or evidence to justify it, the Committee recommended18 that:

"... The detective police, having regard to their number, appear to the Committee to be very efficient for the detection of ordinary crime, ..."

15 Select Committee on the Petition of Frederick Young and Others (1833) paras 3917/8.
16 Parliamentary Papers (1833) (627) vol. XII p. 407 et seq.
17 ibid. page 15.
18 ibid, pages 21-22.
but that:

"... their constitution scarcely adapts them to cope with conspiracies and secret combinations . . . ".

Accordingly the members baldly stated that:

"... the detective police should form a separate division under the control of a special superintendent and under the immediate command of the head of police . . . "

The Committee went on to contradict the only General Order ever issued by Sir Robert Peel, the political progenitor of the Metropolitan Police. They said that:

"... The officer in command of the detective force should have the power to recommend men for his division, whether or not they have filled the office of constable . . . "

There can be little doubt Richard Mayne found the outcome of Sir James Ferguson's inquiry both hurtful and unacceptable. Whether the resultant stress was a factor in his untimely death at home on December 26, 1868, seven months after the publication of the Report, is impossible to determine. Subsequent commentators have, however, alluded to his feeling subject to unfair attack toward the end of his life.

The death of Mayne and Hardy's replacement by a new Secretary of State, Henry Bruce, in the same month overshadowed Ferguson's Report. But those circumstances did not dilute or delay it. In the untimely and unexpected absence of Mayne, and after the departure of the Hardy from Home Office, the newly appointed Commissioner, Lt. Colonel Edmund Henderson, carried into effect much of Ferguson's 1868 Departmental recommendations for the detective branch of the Metropolitan Police. No copy of Ferguson's report is to be found however, in the records or Parliament.

The "Primary Objects" of 1873

Some time after his appointment as Mayne's successor in 1868, Henderson put in hand work to codify and consolidate the growing number of instructions issued to the Metropolitan Police Force. Why he did so is unclear. Copies of Henderson's new Instruction Book for constables, first issued in 1873, have survived. 19 It contains a fundamental departure from Rowan and Mayne's 1829 definition of the role of the professional police. Significantly, the new definition does not form part of the main body of the Instructions. It appears as a Preface to them, a feature unknown to any of the earlier versions. Its status as a formal Instruction to the Force is therefore, ambiguous.

Rowan and Mayne's original definition of the purpose of the New Police has already been noted. Theirs was clearly a General Institution to the Force, and appeared in its proper place among the other Instructions. It will be remembered that it said, unequivocally:


© SWEET & MAXWELL
... It should be understood, at the outset that the principal object to be attained is *the Prevention of Crime ... all the ... objects of a Police establishment, will thus be better effected, than by the detection and punishment of the offender, after he has succeeded in committing the crime ...*" (emphasis added)

By a subtle process of rewording and rearrangement, however, the Preface to Henderson's new version of the Instructions in 1873 abandoned the principle that the prevention of crime is always better than the detection of offenders. In its place it adopted the view that the purpose of policing is both the prevention and the detection of crime.

So was born the phrasing that every recruit to the professional police service was subsequently required to learn by rote. It was, and is, universally known to them as the "Primary Objects".

"The primary object of an efficient police is the prevention of crime, the next that of detection and punishment of offenders if crime is committed.

To these ends all the efforts of Police must be directed. The protection of life and property, the prevention of public tranquillity, and the absence of crime will alone prove whether those efforts have been successful and whether the objects for which the Police were appointed have been attained."

There are three grounds on which to argue that, at the time, both the publication of the "Primary Objects" and the employment of full-time detective officers within the Metropolitan Police which they represent were questionable if not actually *ultra vires*. First, the power to initiate and issue the necessary General Instructions to the Force was confined solely to the Commissioner(s) by section 5 of the Act of 1829. In 1873 full-time detectives were already at work in the Force and, in any event, their presence was due to a report of a Home Office Committee rather than as the result of any initiative of the Commissioner. Secondly, section 1 of the 1829 Act strictly limited the power of the Secretary of State to change the duties of the Commissioner(s) and hence the activities of Metropolitan Police constables they employed. Specifically, it precluded him from directing them, or their constables, to take up the detective and investigative functions of the magistrates of the metropolis.

Finally, neither the Secretary of State nor the Commissioners had the power to give directions to the constables of the Metropolitan Police that they should take up any duty other than those laid down in the Act of 1829. The independence of both the Commissioner and his constables in this respect has been frequently confirmed, particularly in *R. v. Metropolitan Police Commissioner, ex p. Blackburn*,21 and *Fisher v. Oldham Corporation*.22 However, from these same cases it could be argued that Commissioner Henderson's issue of the necessary instructions to give effect to the decisions of the Home Office legitimised those changes in the functions of the police, if only retrospectively. Provided that is, he had authority under the relevant statues to do so. Thankfully, that is a question this article can leave open for further research.

20 ibid. Preface.
21 (1968) (1 All ER, page 769 at D/E).
22 (1930)(2 KB.364).

© SWEET & MAXWELL
Because whatever the outcome of that further inquiry, it is enough to note for the purposes of this article that, despite there being contemporary common law and statutory provisions to the contrary, by 1873 criminal investigation had emerged as an integral part of the structure of the Metropolitan Police. As a consequence of the annual inspection system by Home Office appointed Inspectors of Constabulary introduced by the County and Borough Police Act of 1856, the Home Office was able to impose the Metropolitan model on every police force in Britain.

The Ibbetson Committee of 1878

The final stages of the process of transferring the investigative functions of the magistracy to the professional police service took place in 1878. In the previous year, and in confirmation of Richard Mayne's worst fears for the consequences of imposing detective duties on his Force, a scandalous case of corruption erupted involving the full-time detectives of the Metropolitan Police. In August 1877, with committal proceedings going on at Bow Street against some of the highest ranking detectives in the Force, Disraeli's Home Secretary, Sir Richard Assheton Cross, appointed another internal Home Office inquiry. Assheton Cross selected Sir Henry Selwyn Ibbetson Bt., MP as Chairman.

Sir Henry's report went to the Home Secretary on January 25, 1878. By April Henderson had incorporated its main recommendations into the Instructions to the Metropolitan Police Force and a full scale Criminal Investigation Department (CID) had been created. By 1886, at the end of Henderson's reign as Commissioner, the Metropolitan Police employed 313 officers wholly on criminal investigation duties. They included a headquarters CID unit at Scotland Yard composed of 32 officers under the command of a Chief Superintendent. Divisions had a further 281 full-time detective officers nominally attached to them. In practice, those officers acted independently of local superintendents and answered directly to Scotland Yard.

As with the earlier Fergusson report of 1868, MPs gave no scrutiny to these fundamental changes in the structure and purposes of the New Police. No mention of the Report appears in either the proceedings or the records of Parliament.

Finale - Sir Charles Warren and the Home Office, 1888

Henderson lost his post in March 1886 following the failure of his Force to control a riotous meeting in Trafalgar Square. His successor was General Sir Charles Warren, a military member of the Select Committee whose Report had brought Henderson down. However there was an immediate problem. Warren took a combative attitude toward the involvement of "civilians" in the running of his Force, particularly the officials of the Home Office. It was unfortunate therefore, that on his appointment Warren found James Monro, a former Indian Civil Service high official, under his command as Assistant Commissioner of the Criminal Investigation Department.

24 Parliamentary Debates (Hansard) (1878) Third Series, vols. CCXXXIX, CCXI and CCXLI.
The importance of Warren's view of "civilians" is that it led to the indignant departure of Monro in 1888, prompting Warren to embark on a root and branch review of his large Criminal Investigation Department. As part of that review, Warren wrote to the Home Secretary, Henry Matthews, on November 5, 1888 referring to Ibbetson's radical transformation of the detective branch into a fullblown criminal investigation department during Henderson's Commissionership.

In his letter Warren said:

"... I have to say that this (Ibbetson's) Report appears to be quite unknown in the Commissioners Office as a document, and never appears to have been brought to the notice of the Commissioner for any action to take place on it. Yet for all this the greater part of the recommendations has been more or less carried out. So far as this office is concerned a new Criminal Investigation Department sprang into being without any action on the part of the Commissioner, and its origin is involved with mystery. Under the Statute the whole of the changes ought to have been first proposed by the Commissioner..." (emphasis added)

The Warren episode demonstrates that as late as 1878 the origins and provenance of criminal investigation departments in the modern police service, and the detectives they employed, were open to doubt.

Three days after sending his letter Warren's dispute with the hated "civilians" came to a head causing him to resign in what looks very much like a fit of exasperated pique. He took the opportunity of his resignation letter to revisit and inflame, the debate about his relationship with the Home Office. Quite unnecessarily, he included the belligerent, but perfectly justified, assertion that the Secretary of State, "... had not the power under the Statute of issuing orders for the Police Force . . ." concluding with an offer to resign that the Home Office were more than grateful to accept.

With the departure of Warren, never again would the question of the validity or usefulness of Criminal Investigation Departments in policing be raised. CID officers quickly became, in their own estimation as well as that of the public, the elite of the police service, a position they occupied up to and beyond the scandals of the 1960s.

Postscript

Commissioner Henderson's action in issuing the necessary instructions to carry the recommendations of the Fergusson and Ibbetson committees into effect abrogated any impropriety by the Home Office. Under the statute, as his successor pointed out, Henderson ought to have initiated the changes in the functions and activities of the professional police service that his "Primary Objects" and the emergence of the full-time professional detective represent. He did not do so, and made no issue of it at the time. His neglect effectively undid all the good work Peel and Parliament had put into assuring the independence of the new police from government control.

But although Henderson's pusillanimity may have retrospectively legitimised the actions of the Home Office, it could not, and does not, absolve government from
responsibility for the long-term consequences of the dual peacekeeping and criminal
detection role so created for the emerging police service, or for the adverse effect the
presence of criminal investigators and prosecutors had on the structure and
development of policing in Britain.

(Part II of Mr. Roach's article will appear in a forthcoming issue: Ed.)
Detecting Crime Part II: The Case for a Public Prosecutor

By Lawrence T. Roach, QPM

Summary: This is the second part of an article on "Detecting Crime". The first, "Detection and the Police", described the addition of the detection of crime to the original peacekeeping function of the police by the Home Office during the 1860s and the 1870s, thereby creating the present dual peacekeeping and crime detection role of the modern British police service. This part examines the consequences of that dual role on levels of corruption among police officers; on police management structures; on police performance measurement, and on police/public relationships. It is contended that all those effects are adverse, generating continuing difficulties for the management and control of policing. It is argued that, contrary to the present intentions of the Police Reform Bill, those problems can best be resolved by the appointment of a public prosecutor, so returning the professional police service to its original purely peacekeeping and protective role.

The Dual Role of the Police

Part I of "Detecting Crime" was published under the sub-title "Detection and the Police". It described how, in the decades following the foundation of the modern British professional police service in 1829, crime detection was added to its original preventive and protective function to create its present dual peacekeeping/crime detection role.

"Peacekeeping" is best expressed in the oath of office currently taken by every British police constable on appointment. It is substantially unchanged from that sworn by Robert Peel's New Police at their first creation in 1829:

"I do solemnly and sincerely declare and affirm that I will well and truly serve our Sovereign Lady the Queen in the office of Constable; without favour or affection, malice or ill-will, and that I will to the best of my power cause the peace to be kept and preserved and prevent all offences against the persons and properties of Her majesty's subjects; and while I continue to hold the said office I will, to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law."

"Crime detection" duties were subsequently and, it is contended, improperly added to the original peacekeeping function of the police by the Home Office in the 1860s and 1870s, thereby creating the present-day dual role of the police. Those
additional duties consist of the identification, investigation and detection of criminal offenders with a view to their prosecution and punishment.

Part II of "Detecting Crime" now examines the impact of a dual peacekeeping/crime detection role on the modern police service, and contends that it has had, and continues to have, adverse and damaging consequences in urgent need of correction.

The predictions of Richard Mayne

Thirteen years after the foundation of the modern British professional police service by the establishment of Robert Peel's London Metropolitan Police, Richard Mayne, one of the first joint Commissioners of the Force, was pressed to appoint a few of his constables to be full-time plain-clothes detectives. Hitherto professional policing had been confined to uniformed preventive and protective patrolling ("peacekeeping") both by statute and by the will of Parliament. Mayne's prognosis in a "Memorandum relative to detective powers of police" written in June, 1842 was that the addition of detective duties to the peacekeeping role of his Force would bring two major problems. First, it would import the corruption associated with the detective officers formerly employed by the Magistrates of the metropolis (the Bow Street Runners and their imitators) into his organisation. Secondly, the additional function would create irresolvable dilemmas for the management of professional policing. He argued that it would be difficult to reconcile police actions designed to keep the peace and protect the public from harm, with those aimed at the detection of criminal offenders. For both reasons he only very reluctantly agreed to form a small detective unit "as an experiment". His pessimistic expectations have proved perceptive.

The Origins of Police Corruption

As Mayne pointed out in 1842, there is considerable potential for corruption in a police detective role, both in terms of perversions to the course of justice and in opportunities for personal gain and abuse of authority. Mayne's view was that the addition of the detective duties formerly performed by the old Bow Street Runners and their imitators to the functions of his Force would bring with it an "... understanding between the officers of Police and thieves in practice ..." which, from "... a moral point of view. . . has been repeatedly denounced . . ."

His prediction of a link between detective work and corruption has proved only too accurate. Major scandals associated with the detection of criminals began with the "Turf Fraud" case against the most senior Metropolitan Police detectives in 1877, and show no sign of ending.

Even the normally supportive London 'Times' gave early warning of the corrupting effect detective duties were likely to have on professional policing. In a leader on August 15, 1877,2 while the 'Turf Fraud' conspiracy case was before the courts, 'The Times' said:

"... A Detective Force may be necessary, but, we repeat, it is a very unpleasant necessity, and the danger that attends its employment is clear ... if

1 Memorandum relative to detective powers of police (June 14, 1842). Public Records Office HO45/0S.292/1.
2 The Times, August 15, 1877 p.9 col. e.
the temptations of his (the detective's) life are too strong for him and he forgets to any degree his true allegiance, the mischief he may do is well nigh incalculable. The most potent weapon of justice is turned against justice. It is the rogues who escape and the honest men who are baffled and confounded. The want of security, the dread of the presence of a spy, is transferred to the wrong camp. All this may happen at any time, and from the nature of the case must happen some time..." (emphasis added).

In recent times Sir Robert Mark, one of the better known Commissioners of the London Metropolitan Police, has confirmed the truth of *The Times*’ prediction in his autobiography published in 1978. Having been faced with some of the most serious allegations of corruption made against the professional police service, Sir Robert reminds his readers of his Dimbleby Lecture given at the BBC’s headquarters five years earlier, on November 3, 1973. Dealing with the criminal prosecution process on that occasion he said:

"... It is hardly surprising that a policeman's belief in its fairness should decline as he gathers experience, or that he should be tempted to depart from the rules . . . Most detectives have a strong sense of commitment. It would be unnatural if they did not feel personally involved in some of their cases and it would be untrue to suggest that they are not sometimes outraged by the results. All are under occasional temptation to bend the rules to convict those whom they believe to be guilty, . . . A few may sometimes be tempted also to exploit the system for personal gain. A detective who finds general acceptance of a system which protects the wrongdoer can come to think that if crime seems to pay for everyone else, why not for him? . . . "

Regrettably, neither government nor the leaders of the police service seem aware that the dual role of the service lies at the root of police corruption. Instead, Mayne’s successors and their political masters seem irrevocably committed to a 'bad apples' theory. In that view, corruption can be eliminated from policing by the identification and elimination of the few officers who bring the police service into disrepute by their failure to resist the temptations of their work. No connection is made between corruption and the duties performed by the 'bad apples', who are too often found to be officers engaged in detective work of various kinds. And so, episodes of corruption continue to shake public confidence in the police.

The dual peacekeeping and detective role of the modern police service exacerbates and magnifies the damaging effects of corruption. Any disrepute associated with detective work inevitably contaminates every police officer, not only throwing doubt on the credibility of all police evidence in cases before the courts, but also discrediting, and thus weakening, the peacekeeping and protective activities of the service.

**Management of the Police**

Mayne's prescience about the adverse effect a dual peacekeeping and detective role would have on management of the emerging police service was most notably

---

2 In the Office of Constable (Collins, 1978).
4 *ibid.* 157.

In that Report Lord Scarman discusses the dual role of the modern police service. At paragraph 4.57 he says:

"... the primary duty of the police is to maintain 'the Queen's Peace' which has been described as the 'normal state of society' ... since it is inevitable that there will be aberrations from normality, his second duty arises, which is, without endangering normality, to enforce the law ..."

Lord Scarman describes the second of the two roles of the police as "law enforcement" rather than "crime detection". However, his "aberrations from normality" will include, and indeed largely consist in, breaches of the criminal law. The view of the dual role of the police developed in this article is therefore consistent with Lord Scarman's.

In the next paragraph of his Report, at 4.58, Scarman emphasises and reinforces the disparity between the two roles of the police.

"The conflict which can arise between the duty of the police to maintain order and their duty to enforce the law, and the priority which must be given to the former, have long been recognised by the police themselves, though they are factors to which commentators on policing have in the past often paid too little attention ..."

The conclusions of the Scarman Report then go on fully to substantiate Mayne's view that serious problems are caused by requiring the police both to keep the peace and to detect and prosecute criminals. Lord Scarman's finding in relation to the Brixton disorders was that a perfectly proper police operation to identify, detect and arrest street robbers was the principal cause of a three-day riot which caused widespread destruction of buildings and other property, as well as hundreds of injuries to police and public. The Scarman Report is therefore, a most authoritative account both of the inherent conflict between the police activities of crime detection on the one hand and peacekeeping on the other, and of the priority of peacekeeping in the role of the service.

In its internal structure the modern police service further illustrates the perceptiveness of Scarman's findings and Mayne's earlier advice. In Scarman's light every police force can be seen to be divided into two friendly but competing camps. One, the uniform branch, is composed of officers engaged in peacekeeping, crime deterrence, and community protection. The other, the criminal investigation department (CID), holds plain clothes detectives waging war on crime and criminals. The problem is that the two groups have conflicting objectives, tactics and strategies. Detection as an objective can only be achieved if criminals commit, or are allowed to attempt to commit, crimes. Public protection and peacekeeping on the other hand, aims to deter or prevent all crime in any circumstances. As a result, behind a public front of unity the two camps engage in incessant inter-departmental competition for influence and access to resources. This is not just an example of corporate politics. It is a surface manifestation of the deep structural divide identified by Lord Scarman.

5 Cmd. 8427/1981.
Chief police officers thus face complex decisions on manpower deployment and resource allocation as they attempt to strike a balance between the competing demands of peacekeepers and crime detectors. And, to pose a question first put by Richard Mayne, if both are to be pursued when should one activity stop and the other start?  

Difficulty in transferring police officers between their differing roles complicates such decisions. The duties of peacekeeping and crime detection are so disparate, requiring such differing training, skills and deployments that constables can neither be engaged in both at the same time, nor can they readily move from one to the other. Indeed, on a day-to-day basis constables must in general be posted either in uniform as peacekeepers, or deployed in plain-clothes to detect offenders.

In all, management of the dual role of the police presents an array of interlocking yet conflicting tasks and objectives, which must be met using highly inflexible manpower and resources. Few will sensibly envy the task faced by modern police managers.

Contemporary Issues

The problems presently caused by the dual role of the police have ramifications far beyond those imagined by Richard Mayne, and merit further research. Their extent and complexity are such that space permits the discussion of only two of the more important here.

Value for money and performance measurement

The Thatcher Government of the 1980s sought to apply "value for money" to expenditure on the police, requiring that measurable performance should be obtained from all public funds allocated to policing. Every subsequent administration up to the present day has adopted that policy. However, a major and as yet unresolved problem has emerged in its implementation. As yet, no agreed or acceptable measures of police performance have been developed or established. Every effort to do so (and there have been several) has failed, at least in part because no allowance is made for the dual role of the police and for the impact of increased emphasis on one policing role on progress in the other.

Failure to understand the dual role of the police not only slows progress in the development of reliable police performance indicators, it also produces confused thinking on the effectiveness or otherwise of police activity. An example can be seen in the White Paper on Police Reform (December, 2001). In Chapter 1, paragraph 1.24 describes recent police successes in the detection of crime. However, paragraph 1.25 then complains that "Although recent crime figures should (emphasis added) provide considerable reassurance, public fears about crime remain high", adding in the next paragraph, 1.26, that "The persistence of a high level of fear of crime is not caused by the public simply refusing to believe the crime statistics. Unruly youngsters, anti-social behaviour and environmental neglect can all create a sense of local disruption and insecurity that feeds the fear of crime." In paragraph 1.29, the White Paper identifies all this as a cause for concern saying, "Over the next few years we must tackle these problems and create a real sense of order and security

7 Memorandum relative to detective powers of police June 14, 1842). Public Records Office HO45/OS.292/1, p. 15.
8 Policing a New Century: A Blueprint for Reform (Cmnd. 5326).
in local communities so that the fear of crime can fall in line with crime itself."
(emphasis added)

However, an understanding of the duality of the role of the police reveals a simple explanation for the apparently complex problem identified by the White Paper. An improvement in police performance against crime may well have been, and almost certainly was, achieved by diverting resources from peacekeeping into crime detection. If that is so, then such a shift in police priorities can be predicted to have the adverse effect on public insecurity and fear of crime noted by the White Paper. It should also be said that it is highly likely that any such general shift in police resources, whether from peacekeeping into crime detection or vice versa, will be a response to outside pressure on the service - in all probability, from the Home Office itself!

**Crime Prevention and Police Performance**

A more fundamental source of confusion in the discussion of police performance and its assessment arises from the misuse and abuse of the concept of 'crime prevention'. In a policing context 'crime prevention' is indistinguishable from crime reduction and/or deterrence. Used in that omnibus sense crime prevention is often regarded as a unifying objective to which all police activity, whether it be peacekeeping or crime detection, contributes directly, and hence as a potential measure of the efficiency of, or value for money obtained from, the police service. However, whatever its value may be as a definition of social policy in relation to policing, no variety of the concept of crime prevention will serve as a reliable measure or test of any aspect of police performance.

In the first place, any estimate of the number of crimes prevented by police action is an attempt to measure what has not happened. That requires two very high hurdles to be cleared. First, an accurate and reliable calculation has to be made of the difference between the number of crimes actually committed in the period or place under review, and those which would otherwise have occurred in that period or place. There are good grounds to doubt that any such calculation has ever been made or is possible, but for the purposes of this article it is enough to note that, in common with many another suggested measure of police performance, no reliable or agreed method of estimating the non-occurrence of crime presently exists. The second, and even more testing hurdle, is to calculate how many of those nonexistent crimes can be shown to have failed to occur as a result of any form of police activity, whether it be peacekeeping or crime detection.

This presents insurmountable obstacles as the Home Office implicitly recognise in an important circular on crime prevention issued in 1984.9 The first paragraph of the circular says,

"... A primary objective of the police has always been the prevention of crime. However, since some of the factors affecting crime lie outside the control or direct influence of the police, crime prevention cannot be left to them alone. Every individual citizen and all those agencies whose policies and practices can influence the extent of crime should make their contribution. Preventing crime is a task for the whole community..." (emphasis added).

---

The rest of the circular is devoted to advice and guidance on how best to organise and coordinate crime prevention activities between police and other local and voluntary organisations and agencies.

The circular has had a powerful effect on police managers and has drawn a wide range of other agencies into crime prevention work. As a result, police action aimed at crime prevention is almost invariably taken in parallel or in cooperation with other bodies and agencies, adding another layer of complexity to the already extremely difficult task of connecting police activity to an identifiable crime prevention effect.

Not only is it necessary to assess the influence of those other "... factors affecting crime ..." which are admitted to be not under "... the control or direct influence of the police ..." but as a result of the "Crime Prevention" circular, the impact of police action on levels of crime must now be distinguished from that of a wide range of other bodies and organisations. The Home Office's own advice and guidance on the issue therefore, has contributed to the impossibility of using crime prevention as a reliable means to assess either the value for money obtained from policing or the efficiency of the police, whether as a whole or in respect of any of its units or activities.

In sum, the conflicts inherent in the dual role of the police created by the Home Office in the 19th century are a fundamental cause of the difficulty in now assessing the value for money obtained from policing, and in setting accurate and useful measures of police performance. It is also clear that those problems cannot be avoided by using crime prevention, reduction or deterrence as a measure of the effect of any form of policing.

It may be possible to find a solution to these complex performance measurement difficulties in relation to one or other of the present peacekeeping and crime detection functions of the police. But while the police service is required to pursue the contrasting, and indeed conflicting, objectives of peacekeeping and crime detection, and to select, train, organise and deploy its officers into two disparate and competing parts in order to do so, no satisfactory resolution of the problems of the overall value for money the police service provides, or of its general efficiency and effectiveness, can reasonably be expected.

Community Confusion

A dual peacekeeping/detective role has potentially serious consequences for police/community relations, especially among disadvantaged sections of our society. Examples are the recent difficulties faced by the Metropolitan Police in dealing with the murders of Stephen Lawrence and Damilola Taylor and their continuing aftermaths, and those still affecting the Royal Ulster Constabulary (now the Police Service of Northern Ireland) as a result of its investigation of the Omagh bombing. The problem is that the dual role of the police requires the service to present itself as responsible both for the protection and support of all citizens, and for the detection and punishment of those same citizens if and when they commit crime. The two functions are, understandably, difficult to reconcile by both police officers and the public they seek to serve, creating formidable obstacles to mutual trust and the free flow of information.

In several respects the Stephen Lawrence Inquiry conducted by Sir William Macpherson of Cluny, whose Report was presented to Parliament in February
1999,\textsuperscript{10} is a good illustration of the complex, interlocking community relations difficulties created for the police service by its dual role. Sir William's terms of reference were:

"To inquire into the matters arising from the death of Stephen Lawrence on April 22, 1993 to date, in order particularly to identify the lessons to be learned for the investigation and prosecution of racially motivated crimes."

Two issues arise from the Inquiry of relevance to this article. First, the Inquiry is an example of the negative effect the dual role of the police can have on its relationship with the diverse communities with which it deals. It shows that damage can be done to the peacekeeping role of the police by an adverse feedback from a failure in its crime detection activity, especially where such activity relates to crime across social and/or ethnic divisions.

Secondly, the Lawrence inquiry seems not to have taken account of the duality of the police role in reaching its conclusions and recommendations. This is surprising since the Inquiry quotes the Scarman Report extensively, and indeed, uses Lord Scarman's observations and conclusions to sharpen and justify many of its criticisms of police action in the Lawrence case.\textsuperscript{11} It is unfortunate therefore, that Sir William seems not to have heeded Lord Scarman's warning that the dual role of the police and the conflicts that can arise from it "... are factors to which commentators on policing have in the past paid too little attention ..."

That oversight must raise the possibility that the Lawrence Inquiry may have made judgments about the conduct of the Metropolitan Police as a whole, as well as of its individual officers carrying out their crime investigation and detection function, without taking full account of the problems of the dual role described both herein and by Lord Scarman. If that is so, the Inquiry Report must lose some of the impact it might otherwise have had.

The Case for a Public Prosecutor

The police service is faced with a number of major long-term problems arising from its dual role. It remains now to suggest, however briefly, how those problems might best be solved. Unfortunately, existing academic literature on police and policing provides little assistance.

Research into the police and policing has tended to focus on its social and political context in order to explain why the police service takes its present form. Much less interest has been shown in how changes in the service take place or the processes involved. As a consequence, the importance of the reports of the Fergusson and Ibbetson Home Office committees of 1868 and 1878 respectively, which are the source from which police criminal investigation departments sprang, has not been much noticed. Indeed, a leading authority on policing, Professor Robert Reiner, recently published a comprehensive review of the literature on policing\textsuperscript{12} which found no need to discuss the impact of those committees; or to examine the effects of the resulting dual role of the police as they are described in

\textsuperscript{10} Cm 4262-1.
\textsuperscript{11} Cmnd. 8427 (1981), Chap. 6 paras. 6.7 to 6.15.
these articles, or to include that development in a chronology of significant events in police history.\textsuperscript{13}

An End to the Dual Role

In its two parts 'Detecting Crime' identifies the creation of a dual peacekeeping/crime detection role by the improper imposition of a responsibility for crime investigation and detection on the police by the Home Office in the late nineteenth century, as the source of the major, continuing and seemingly insoluble problems now facing the service. The primordiality and priority of peacekeeping in the role of the modern British police service has also been authoritative established. Taken together these two findings strongly suggest that any long-term solution to the problems presently facing the police service should end its dual role by removing its responsibilities for the investigation and detection of criminal offenders.

Clearly, the investigation, identification, detection and prosecution of criminal offenders is a vitally important part of our system of criminal justice. It cannot be altogether abandoned. If therefore, the police withdraw from those activities alternative arrangements must be made.

Fortunately, this is by no means a novel proposal. The need for the appointment of a public prosecutor to undertake the criminal investigation, detection and prosecution duties now performed by the police service was noticed by the 1839 Royal Commission on the Establishment of a Constabulary Force. The appointment of public prosecutors with investigative and detective powers was also advocated in 1845 by the Eighth Report of another Royal Commission, on the Criminal Law.

Parliament cannot claim that it has never had an opportunity to consider the idea. In 1856 a Select Committee on Public Prosecutors looked at the criminal justice system in America, Scotland and Ireland.\textsuperscript{14} It recommended that;

"... agents shall be appointed ... for the purpose of preparing and conducting prosecutions to the time of trial, ...  
... Where it comes to their knowledge that an offence has been committed, and that no steps have been taken to bring the offender to justice, it will be their duty to take the necessary steps for apprehending or for otherwise bringing the offender before a magistrate ..."

An attempt to legislate on the Select Committee recommendations foundered.

The proposal that the police should hand their present detective duties to a public prosecutor is also not as revolutionary as it may seem. Recent developments in the criminal justice system have all been in that direction.

The Crown Prosecution Service

The emergence of the Crown Prosecution Service (CPS) in 1985 removed large areas of criminal investigation and prosecution from the responsibilities of local chief police officers. Consequently the CPS has penetrated ever deeper back down the line of investigation into the offices of local police detective departments (CID).
A review of the CPS by Sir Iain Glidewell published in June, 1998 illustrates the extent of that development. Sir Iain and his Committee recommend the amalgamation of some of the functions of the CPS with police administration units. The Review says:

"Such a single integrated unit, which we have christened a Criminal Justice Unit, could be either a police Unit with one or more CPS lawyers working permanently in it, or a CPS Unit with some police staff. We firmly recommend the second option."

Earlier, in the main body of the Review, Sir Iain and his colleagues say;

"Such a unit will need to be able to call on the police to take action in obtaining more evidence and so a senior police officer will need to be part of the unit, which would be housed in or near the relevant police station."

The CPS plan to have 73 such "... co-located Criminal Justice Units ..." open by March 31, 2002. These developments are a very short step from the proposals made here.

A renewed Police Service
In sum, a long-term permanent solution to the problems facing the police requires the service to withdraw from the investigation of crime, and the identification, detection and prosecution of criminal offenders. In its place a national public prosecution department should be created within the Crown Prosecution Service under the direction of a public prosecutor supported by a staff of full-time crime investigators.

Benefits and Precedents
The proposal is firmly rooted in the British criminal justice system, and does not draw upon, or imitate, other legal traditions. As such it has many beneficial side-effects and is by no means unprecedented. It would, for instance, provide an immediate reservoir of highly trained and experienced police detectives to staff the new prosecution department. The people presently engaged in the investigation and detection of criminal offenders would continue to do so, but under new management. There is an abundance of precedent for such a non-police criminal investigative body.

Detective work is not, and never has been, solely confined to the professional police service, as Professor Reiner and others helpfully note. The Atomic Energy Authority, British Transport, the Armed Forces and many other bodies such as parks constabularies, independently maintain bodies of detectives. Other organisations, such as the Inland Revenue, Customs and Excise, the Post Office and the immigration and benefits services, carry out criminal investigation, detection and prosecution activities indistinguishable in practice from those of police detectives. A CPS public prosecutor department will find a wide range of established precedents.

17 ibid. Summary of the Main Report, etc., para. 29.
On the other hand, effective peacekeeping by the police does not require the service to be involved in the detection and prosecution of crime, as Peel's New Police amply demonstrated during the first 40 years of their existence. The proposals of this article would merely refocus the police service on its original patrolling, protective and preventive role and relieve its officers of the onerous burden of paperwork caused by their present involvement in the prosecution of criminal offenders. Police officers would then be wholly devoted to peacekeeping and crime reduction by the proven and powerful deterrent effect of their visible presence in our streets and public places. All contemporary evidence and comment suggests that such a presence is both conspicuously absent and sorely missed.

The Police Reform Bill

Regrettably, government policy, as it is reflected in the recent White Paper and Bill on Police Reform, is moving in the opposite direction. Rather than seeking to reduce police involvement in their secondary role of the investigation and detection of criminal offenders, the present Police Reform Bill aims to distance the police service from peacekeeping in order to enhance its performance against crime. To that end the Bill proposes to give Chief Constables power to 'accredit' any of their existing staff with limited police powers, either as peacekeepers or as 'investigating offices'. Significantly for the purposes of this article however, the Bill goes on to reveal its true intentions for the future role of the professional police service by extending the accreditation process to non-police commercial organisations and their employees, but only in a uniformed, peacekeeping role. The Bill thereby runs the risk of resurrecting the disreputable rabble of local watch- and 'charley-' men contemptuously swept away by Robert Peel in 1829, while simultaneously ignoring the lessons to be learned from the history of policing and rejecting the authoritative findings of Lord Scarman and others on the proper priority of the role and functions of professional police officers.

Finale

If however, reform follows the proposals set out in this article it would give the Royal Commission of 1839 - that constant source of reference in this context - a final word on the future of the British police service. It, better than any later commentator, understood the purposes and functions of a truly peacekeeping police. Among the Conclusions to its First Report the Commission says,

"... the main purpose of a preventative police . . . (is) . . . the protection of private individuals in the enjoyment of their rights against infractions by depredators and others ..."

This identifies the task of a properly constituted professional police service and chimes well with the wording of the oath of office taken on appointment by every modern constable with which this article began. In our times the inclusion of " . . . and others ..." in the words used by the 1839 Royal Commission should

20 ibid. cl.34(2).

© SWEET & MAXWELL
strike an especially resonant note. It reminds us of the vital importance, to the health of our form of democracy, of the operational independence of the professional police service from any outside influence other than the law itself. Including and especially, as both Robert Peel and Richard Mayne wisely recognised, government and its agents.
1. My comments will fall under two main heads:

   a) the validity of the evidence presented in Chapter 1 on 'The need for Police Reform', and

   b) the appropriateness of the programme of reform proposed in subsequent Chapters.

My main purpose is to draw attention to sources of relevant information which may either not have been available, or have been overlooked for some reason, in the drafting of the Paper. A subsidiary objective is to suggest a beneficial shift of emphasis in the proposed police reforms, to more accurately and effectively focus them on the White Paper's aim to improve the standard of security and protection provided by government to all citizens.

Two sources are drawn on in these comments;

i) the Report of an enquiry into the Brixton Disorders 10-12 April 1981, by Lord Scarman, O.B.E. (Cmnd.8427)

ii) an unpublished paper, on the history and significance of criminal investigation departments in the British Police Service. The paper is based on an examination and analysis of Parliamentary and public records, and is presently under consideration for publication by the Criminal Law Review.

Validity of evidence in Chapter 1 on 'The Need for Police Reform'

2. The Foreword to the White Paper states its purpose. Paragraph 3 says that the intention is to '...substantially improve the standard, reliability, consistency and responsiveness of the (police) service....' Paragraph 6 says two things,
a) 'Our task is clear. We want to prevent, detect, apprehend and convict the perpetrators of crime.', and

b) 'We need and will have a process that enables those undertaking the basic task of protecting our homes, our streets, and our persons to do the job more effectively'.

3. Since the White Paper deals at various points both with the responsibilities of the police service in relation to crime, and with its duty to deal with 'anti-social thuggish behaviour', disorder etc., I have taken these sentences in paragraph 6 of the Foreword to the White Paper to be its view of the functions of the police service (i.e. its role) for the purposes of the reforms it proposes. I therefore accept and shall use this definition of the role of the police in these comments. For convenience I shall refer to the function 'prevent, detect, apprehend and convict the perpetrators of crime' as 'crime reduction', and shall use 'peace keeping' when referring to the function 'protecting our homes, our streets, and our persons'.

4. The White Paper follows Lord Scarman in making a distinction between these two main functions of the police role. The existence of a division in the role of the police, and the problems that arise from it, were authoritatively identified and discussed in his Report of an enquiry into the Brixton Disorders mentioned at 1) above. In his Report Lord Scarman said:

4.57 "..the primary duty of the police is to maintain 'the Queen's Peace', which has been described as the 'normal state of society'...Since it is inevitable that there will be aberrations from normality, his second duty arises, which is, without endangering normality, to enforce the law..."


However, and materially for the purposes of these comments on the White Paper on Police Reform, Lord Scarman went on to set out the importance and significance of this division in the role of the police. In the next paragraph of his Report he says:

4.58 'The conflict which can arise between the duty of the police to maintain order and their duty to enforce the law, and the priority which must be given to the former, have long been recognized by the police themselves, though they are factors to which commentators on policing have in the past often paid too little attention....'

5. Lord Scarman concludes that the Brixton Disorders which were the subject of his enquiry were an example of conflict between the peace-keeping duties of the police, and their obligation to reduce crime. He found that a perfectly proper police operation to prevent street robbery and to detect and arrest the offender was a major cause of an outbreak of urban rioting. Paragraph 4.21 of the Report is of particular interest in this respect. Lord Scarman notes that uniformed officers were deployed in Brixton to prevent crime and deter criminal offenders. However, despite the intentions of the local police commanders, that action did not reduce street robberies in the area over the long term, but was itself a significant factor in the later outbreak of disorder.

6. Lord Scarman's Report shows that crime reduction and peace-keeping are distinct and even conflicting tasks for the police, requiring different.
deployments, policing skills and tactics. That creates a constant problem for police managers who have to decide how to divide their available officers between these differing activities. The Report also found that if police, either individually or as a unit, are required to achieve both objectives, they must be given clear directions on which task has priority.

The Scarman enquiry Report and its findings have an impact on the validity of the evidence presented by the White Paper on the need for reform of the police. In particular, Chapter I describes recent police success in the detection of crime, adding however that (paragraph 1.24) '... we must reverse the trend for the crime rates that are rising, and continue to drive down the rates for other crimes...'. In the next section, at paragraph 1.25, the Paper says 'Although recent crime figures should provide considerable reassurance, public fears about crime remain high.' going on to say (paragraph 1.26) that 'We expect the police at every level... to clamp down on thuggish, brutal and uncivilised behaviour wherever it occurs'.

My comment on this part of the Report is that, in the light of Lord Scarman's Report it should be apparent that the recent success of the police in reducing crime is, in all probability, a cause of continuing high public insecurity and fears of crime. What the White Paper presents as puzzling, i.e. that police success in reducing crime has had little or no effect on levels of fear of crime, is, in fact, no more than might be expected. Crime has been reduced by police activity, but public fear of crime and/or insecurity has been adversely affected by the consequent shift of policing resources from peace-keeping into crime reduction. Crime reduction and peace-keeping are not complementary either in principle or in the practice of policing, as Lord Scarman pointed out This is an interpretation of the evidence put forward in the White Paper for which there is also a good deal of anecdotal evidence, and to which credence is given by the 'Average percentage satisfaction' charts set out in paragraph 1.48.

This conclusion has some interesting consequences. It leads for instance, into a search for the reasons for the general or wide-spread shift in policing priorities identified by the White Paper. One such obvious avenue of enquiry is the extent to which priority and resource allocation decisions by chief police officers are influenced by ministerial priorities and objective setting. In effect, Lord Scarman's Report indicates that the Home Office itself may be the cause of the problems it identifies in its White paper.

In addition, this alternative interpretation of the facts presented in the White Paper extenuates the criticism of undue variability in performance as between different police forces set out in paragraphs 1.39 to 1.42. It raises the possibility that such variations in success against crime targets may not be the result of differing levels of competence or efficiency in combating crime, but merely the outcome of legitimate, defensible and even commendable differences in local priorities as between crime reduction and peace-keeping.

The White Paper's failure to take account of priorities when criticising the performance of police units is compounded by its disregard of the importance Lord Scarman attaches to establishing a priority between peace-keeping and crime reduction where the police are required to pursue both. The White Paper proposes to impose just such a dual requirement on the police service as a
whole, yet it neither discusses nor recognises the issue of priorities, nor does it give any advice or guidance on it.

12. In all, the absence of any discussion in the White Paper of the authoritative conclusions and findings of Lord Scarman in his Report on the Brixton Disorders is surprising. The omission seriously undermines the case on which the argument for radical reform in the police service is based. Equally the White Paper requires the police service to improve its performance in the reduction of crime and in the maintenance of order, yet it fails to give any guidance on the priority to be given to those very different, and potentially conflicting, tasks.

The appropriateness of the proposed programme of police reform

13. The Parliamentary and public record, as it is set out and examined in my unpublished paper, makes it abundantly clear that, at their origin, Peel's New Police were intended to be a purely protective and preventive force, specifically excluded from any involvement in criminal enquiries or procedures, i.e. 'peace keepers' within the definition used in the White Paper. The founders of British professional policing may have used the words 'the prevention of crime' when describing their objective in their Instructions to their newly appointed constables, but their evidence to a Select Committee in 1833 shows that their actual contribution to that end was confined strictly to the deterrent effect caused by the visible presence of their patrolling officers.

14. The public record then goes on to show that the 'crime reduction' activities associated with police criminal investigation departments were subsequently imposed on the police service in the late nineteenth century by the indirect and concealed means of Home Office internal committees, often in the face of fierce objection from the early leaders of the police. My paper concludes from the evidence of the public record that the action of the Home Office in this matter was almost certainly ultra vires, and probably unlawful.

15. Against that background, the White Paper on Police Reform proposes to solve the present difficulties of the police by reducing their involvement in the duty to which they were originally dedicated, i.e. that of peace-keeping and protection of the public, in order to refocus them on their later, and secondary, role of crime investigation and detection. The White Paper thereby flies in the face of the intentions of the first founders of the police service and the Parliamentarians who were so careful to specify the task Peel's New Police were to perform. It also contradicts the interpretation of the priory of the differing roles of the police consistently given by the Law Lords, and best articulated by Lord Scarman.

16. That being so, if radical reform in the duties of the police must be made, it will more consistently accord with the tradition of the service, and more accurately reflect the common law and the history of (and recent developments in) policing, if it is the crime investigation and detection work of the service that is reduced rather than its peace-keeping function. My unpublished paper expands on and fully argues the case for the conclusion that the best solution to the present difficulties of the police will be to transfer all the crime investigation, detection and prosecution duties presently performed by the police service to an executive arm formed within the Crown Prosecution Service, leaving the police...
with the sole task of keeping the peace and protecting citizens from harm. Under that system, the contribution of the police to the prevention of crime would be the deterrent effect of their visible, active presence in public places, as was the case at their first foundation.

17. The benefits of that approach to the reform of the police are many and considerable. They not only include compliance with the traditions of policing and coherence with modern developments in the criminal justice system, but will leave fully trained and experienced professionals engaged in every aspect of crime prevention (i.e. a truncated and refocused existing police service), and crime investigation, detection and prosecution (i.e. an enhanced and expanded Crown Prosecution Service). It will also simplify performance measurement and value for money assessment in the police service, and improve relations between the police and local communities, especially ethnic and other disadvantaged groups, since the police will no longer be seen as the agency by which members of the community are prosecuted and punished through the criminal courts. My unpublished paper more fully examines and assesses the beneficial consequences of this alternate approach to police reform.

Conclusion
18. Much of what is said in these comments arises because there is, at present, neither an agreed list of the proper functions of the police service, nor a generally accepted definition of its role. A great deal has been done in recent years to try to correct that omission, but nothing of substance has emerged. If recent experience with the problems of developing accurate and useful performance measures for policing has any relevance to the matter, the White Paper's proposals for a new National Policing Plan and a complementary Standards Unit will come to nothing unless these questions are answered authoritatively. As the Home Office minister, Alun Michael MP, said in August 1998, 'We can only measure the success of the police if the service knows the outcomes it is trying to achieve...'. Regrettably, the White Paper neither recognises the weakening effect on its criticisms of the police caused by that lacuna in public policy, nor does it deliver on that crucial issue.

20th January 2002

L. T. Roach
Bibliography


Heron, F. E. [1970] *A Brief History of the Metropolitan Police* Metropolitan Police Training School, London


Jackson, N. and Carter, P. [1990] *In defence of paradigm incommensurability* University of Hull, School of Management


Bibliography


Morgan, Kenneth O. [1984] *The Oxford Illustrated History of Britain* Oxford University Press


Bibliography


Prothero, Margaret [1931] *The History of the Criminal Investigation Department at Scotland Yard* Herbert Jenkins, London.


Reith, Charles [1943] British Police and the Democratic Ideal Oxford University Press


Waddington, Peter A. J. [1993] Calling the Police: The interpretation of, and response to, calls for assistance from the public Avebury, Aldershot.


