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The Demand For Order And The Birth Of Modern Policing

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December 2003

Why were the modern police created?

It is generally assumed, among people who think about it at all, that the police were created to deal with rising levels of crime caused by urbanization and increasing numbers of immigrants. John Schneider describes the typical accounts:

The first studies were legal and administrative in their focus, confined mostly to narrative descriptions of the step-by-step demise of the old constabulary and the steady, but often controversial evolution of the professionals. Scholars seemed preoccupied with the politics of police reform. Its causes, on the other hand, were considered only in cursory fashion, more often assumed than proved. Cities, it would seem, moved inevitably toward modern policing as a consequence of

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Retrieved on 8th June 2021 from www.historyisaweapon.com
From *Monthly Review*, Dec, 2003. This essay is based on Kristian Williams' book, *Our Enemies in Blue*.

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soaring levels of crime and disorder in an era of phenomenal growth and profound social change.¹

I will refer to this as the “crime-and-disorder” theory.

Despite its initial plausibility, the idea that the police were invented in response to an epidemic of crime is, to be blunt, exactly wrong. Furthermore, it is not much of an explanation. It assumes that “when crime reaches a certain level, the ‘natural’ social response is to create a uniformed police force. This, of course, is not an explanation but an assertion of a natural law for which there is little evidence.”²

We cannot rule out the possibility that slave revolts, riots, and other instances of collective violence precipitated the creation of modern police, but we should remember that neither crime nor disorder were unique to nineteenth-century cities, and therefore cannot on their own account for a change like the rise of a new institution. Riotous mobs controlled much of London during the summer of 1780, but the Metropolitan Police did not appear until 1829—almost fifty years later. Public drunkenness was a serious problem in Boston as early as 1775, but a modern police force was not created there until 1838.³ So the crime-and-disorder theory fails to explain why earlier crime waves didn’t produce modern police; it also fails to explain why crime in the nineteenth century led to policing, and not to some other system.⁴

Furthermore, it is not at all clear that crime was on the rise prior to the creation of the modern police. In Boston, for example, crime

¹ John C. Schneider, *Detroit and the Problem of Order, 1830–1880* (Lincoln: University of Nebraska Press, 1980) 54.

² Eric H. Monkkenon, *Police in Urban America, 1860–1920* (Cambridge: Cambridge University Press, 1981) 50.

³ Richard J. Lundman, *Police and Policing* (New York: Holt, Rinehart, and Winston, 1980) 31.

⁴ Monkkenon, *Police*, 50–1.

needn’t be given the opportunity to act. In both instances the new police were there doing what would have been nearly inconceivable just a few years before.

It was in this way that the United States became what Allan Silver calls “a policed society.”

A policed society is unique in that central power exercises potentially violent supervision over the population by bureaucratic means widely diffused throughout civil society in small and discretionary operations that are capable of rapid concentration.³²

The police organization allowed the state to establish a constant presence in a wide geographic area and exercise routinized control by the use of patrols and other surveillance. Through the same organization, the state retained the ability to concentrate its power in the event of a riot or other emergency, without having to resort to the use of troops or the maintenance of a military presence. Silver argues that the significance of this advance “lay not only in its narrow application to crime and violence. In a broader sense, it represented the penetration and continual presence of central political authority throughout daffy life.”³³ The populace as a whole, even if not every individual person, was to be put under constant surveillance. With the birth of modern policing, the state acquired a new means of controlling the citizenry—one based on its experiences, not only with crime and domestic disorder, but with colonialism and slavery as well. If policing was not in its inception a totalitarian pursuit, the modern development of the institution has at least been a major step in that direction.

Thanks to Emily-Jane Dawson for her comments on an earlier draft of this article.

³² Silver, “Demand,” 8.

³³ Silver, “Demand,” 12–3.

a set, of these factors in crafting their explanations, with most emphasizing those surrounding the sudden and rapid expansion of the urban population, especially immigrant communities.

Urbanization certainly had a role, but it is not the role it is usually assumed to have had. Rather than producing widespread criminality, cities actually promoted widespread civility; as the population rose, the rate of serious crime dropped. The crisis of the time was not one of law, but of order—specifically the order required by the new industrial economy and the religious moralism that supplied, in large part, its ideological expression.

The police provided a mechanism by which the power of the state, and eventually that of the emerging ruling class, could be brought to bear on the lives and habits of individual members of society.

The new organization of police made it possible for the first time in generations to attempt a wide enforcement of the criminal code, especially the vice laws. But while the earlier lack of execution was largely the result of weakness, it had served a useful function also, as part of the system of compromise which made the law tolerable.³¹

In other words, the much-decried inefficiency and inadequacy of the night watch in fact corresponded with the practical limitations on the power of the state. With these limits removed or overcome, the state at once cast itself in a more active role. Public safety was no longer in the hands of amateur night-watchmen, but had been transferred to a full-time professional body, directed by and accountable to the city authorities. The enforcement of the law no longer relied on the complaints of aggrieved citizens, but on the initiative of officers whose mission was to prevent offenses. Hence, crimes without victims needn't be ignored, and potential offenders

³¹ Lane, *Policing*, 84.

went down between 1820 and 1830,⁵ and continued to drop for the rest of the nineteenth century.⁶ In fact, crime was such a minor concern that it was not even mentioned in the City Marshal's report of 1824.⁷ And the city suffered only a single murder between 1822 and 1834.⁸

Whether or not crime was on the rise, after the introduction of modern policing the number of arrests increased.⁹ The majority of these were for misdemeanors, and most related to victimless crimes, or crimes against the public order. They did not generally involve violence or the loss of property, but instead were related to public drunkenness, vagrancy, loitering, disorderly conduct, or being a "suspicious person."¹⁰ In other words, the greatest portion of the actual business of law enforcement did not concern the protection of life and property, but the controlling of poor people, their habits and their manners. Sidney Harring wryly notes: "The criminologist's definition of 'public order crimes' comes perilously close to the historian's description of 'working-class leisure-time activity.'"¹¹ The suppression of such disorderly conduct was only made possible by the introduction of modern police. For the first time, more arrests were made on the initiative of the officer than in re-

⁵ Seldan Daskan Bacon, *The Early Development of the American Municipal Police* vol. 2. diss. Yale University, 1939. (Ann Arbor: University Microfilms International [facsimile], 1986) 455.

⁶ Roger Lane, "Crime and Criminal Statistics in Nineteenth-Century Massachusetts" *Journal Of Social History* (Winter 1968) 157. Lane bases this conclusion on an examination of lower court cases, jail sentences, grand jury proceedings, and prison records.

⁷ Roger Lane, *Policing the City* (Cambridge: Harvard University Press, 1967) 19.

⁸ James F. Richardson, *Urban Police in the United States* (Port Washington, New York: National University Press, 1974) 19.

⁹ Lane, "Crime," 158–9.

¹⁰ Lane, "Crime," 160; and Monkkonen, *Police*, 103.

¹¹ Sidney Harring, *Policing a Class Society* (New Brunswick, New Jersey: Rutgers University Press, 1983) 198.

response to specific complaints.¹² Though the charges were generally minor, the implications were not: the change from privately-initiated to police-initiated prosecutions greatly shifted the balance of power between the citizenry and the state.

A critic of this view might suggest that the rise in public order arrests reflected an increase in public order offenses, rather than a shift in official priorities. Unfortunately, there is no way to verify this claim. (The increase in arrests does not provide very good evidence, since it is precisely the fact which the hypothesis seeks to explain.) However, if the tolerance for disorder was in decline, this fact, coupled with the emergence of the new police, would be sufficient to explain the increase in arrests of this type.¹³

The Cleveland police offered a limited test of this hypothesis. In December 1907, they adopted a “Golden Rule” policy. Rather than arrest drunks and other public order offenders, the police walked them home or issued a warning. In the year before the policy was established, they made 30,418 arrests, only 938 of which were for felonies. In the year after the Golden Rule was instituted, the police made 10,095 arrests, one thousand of which were for felonies.¹⁴ Other cities implemented similar policies—in some cases, reducing the number of arrests by 75 percent.¹⁵

Cleveland’s example demonstrates that official tolerance can reduce arrest rates. This suggests an explanation for the sudden rise in misdemeanor arrests during the previous century: if official tolerance can reduce arrest rates, it makes sense that official intolerance could increase the number of arrests. In other words, during the nineteenth century crime was down, but the demand for order was up—at least among those people who could influence the administration of the law.

¹² Monkkonen, *Police*, 103.

¹³ Lane, *Policing*, 222; and Lane, “Crime,” 161.

¹⁴ Richardson, *Urban*, 79–80.

¹⁵ Harring, *Policing*, 40.

nization, or the enslavement of a subject people.³⁰ In other words, it was at the point where authority was met with resistance that the organized application of force became necessary.

The aims and means of social control always approximately reflect the anxieties of elites. In times of crisis or pronounced social change, as the concerns of elites shift, the mechanisms of social control are adapted accordingly. So, in the South, following real or rumored slave revolts, the institution of the slave patrol emerged. White men were required to take shifts riding between plantations, apprehending runaways and breaking up slave gatherings.

Later, complex factors conspired to produce the modern police force. Industrialization changed the system of social stratification and added a new set of threats, subsumed under the title of the “dangerous classes.” Moreover, while serious crime was on the decline, the demand for order was on the rise owing to the needs of the new economic regime and the ideology that supported it. In response to these conditions, American cities created a distinctive brand of police. They borrowed heavily from the English model already in place, but also took ideas from the office of the constable, the militia, and the semi-professional, part-time enforcement bodies like the night watch and the slave patrols.

At the same time, the drift toward modern policing fit nicely with the larger movement toward modern municipal government—best understood in terms of the emerging political machines, and later tied to the rise of bureaucracies.

The extensive inter-relation between these various factors—industrialization, increasing demands for order, fear of the dangerous classes, pre-existing models of policing, and the development of political machines—makes it obvious that no single item can be identified as the sole cause for the move toward policing. History isn’t propelled by a single engine, though historical accounts often are. Scholars have generally relied on one, or

³⁰ Bayley, “Development,” 66–7.

So, contrary to the crime-and-disorder explanation, the new police system was not created in response to spiraling crime rates, but developed as a means of social control by which an emerging dominant class could impose their values on the larger population.

This shift can only be understood against a backdrop of much broader social changes. Industrialization and urbanization produced a new class of workers and, with it, new challenges for social control. They also provided opportunities for social control at a level previously unknown. The police represented one aspect of this growing apparatus, as did the prison, and sometime later, the public²⁸ school. Moreover, the police, by forming a major source of power for city governments, also contributed to the development of other bureaucracies and increased the possibility for rational administration. In sum, the development of modern police facilitated further industrialization, it led to the creation of other bureaucracies and advances in municipal government, it consolidated the influence of political machines, and it made possible the imposition of Victorian moral values on the urban population. Also, and more basically, it allowed the state to impose on the lives of individuals in an unprecedented manner.

Sovereignty, and even states, are older than the police. “European kingdoms in the Middle Ages became ‘law states’ before they became ‘police states,’”²⁹ meaning that they made laws and adjudicated claims before they established an independent mechanism for enforcing them. Organized police forces arose specifically when traditional, informal, or community-maintained means of social control broke down. This breakdown was always prompted by a larger social change, often by a change which some part of the community resisted with violence, such as the creation of a state, colo-

²⁸ libcom note: for UK readers, public school in American English means state school

²⁹ David H. Bayley, “The Development of Modern Policing,” Policing Perspectives eds. Larry K. Gaines and Gary W. Cordner (Los Angeles: Roxbury Publishing Company, 1999) 60.

Although the problems of the streets—the fights, the crowds, the crime, the children—were nothing new, the ‘problem’ itself represented altered bourgeois perceptions and a broadened political initiative. An area of social life that had been taken for granted, an accepted feature of city life, became visible, subject to scrutiny and intervention.¹⁶

New York city’s campaign against prostitution certainly followed this pattern. During the first half of the nineteenth century, the official attitude concerning prostitution transformed from one of complacency to one of moral panic. Beginning In the 1830s, when reform societies took an interest in the issue, it was widely claimed that prostitution was approaching epidemic proportions. Probably the number of prostitutes did increase: the night watch estimated that there were 600 prostitutes working in 1806, and 1,200 in 1818. In 1856, Police Chief George Matsell set the figure at 5,000. But given that the population of the city increased by more than six times between 1820 and 1860, the official estimates actually showed a decrease in the number of prostitutes relative to the population.¹⁷

Enforcement activities, however, increased markedly during the same period. In 1860, ninety people were committed to the First District Prison for keeping a “disorderly house.” This figure was five times that of 1849, when seventeen people were imprisoned for the offense. Likewise, prison sentences for vagrancy rose from 3,173 for the entire decade covering 1820–1830, to 3,552 in 1850 and 6,552 in 1860. As prostitutes were generally cited for vagrancy (since prostitution itself was not a statutory offense), the proportion of female “vagrants” steadily rose: women comprised

¹⁶ Christine Stansell, *City of Women* (Urbana: University of Illinois Press, 1987) 197.

¹⁷ Stansell, *City*, 172–3.

62 percent of those imprisoned for vagrancy in 1850 and 72 percent in 1860.¹⁸

This analysis does not solve the problem, but merely relocates it. If it was not crime but the standards of order that were rising, what caused the higher standards of public order? For one thing, the relative absence of serious crime may have facilitated the rise in social standards and the demand for order. “A fall in the real crime rate allows officially accepted standards of conduct to rise; as standards rise, the penal machinery is extended and refined; the result is that an increase in the total number of cases brought in accompanies a decrease in their relative severity.”¹⁹

Once established, the police themselves may have helped to raise expectations. In New York, Chief Matsell actively promoted the panic over public disorder, in part to quiet criticism of the new police.²⁰ More subtly, the very existence of the police may have suggested the possibility of urban peace and made it seem feasible that most laws would be enforced—not indirectly by the citizenry, but directly by the state.²¹ And the new emphasis on public order corresponded with the religious perspective of the dominant class and the demands of the new industrialized economy, ensuring elite support for policing.

This intersection of class bias and rigid moralism was particularly clear concerning, and had special implications for, the status of women. In many ways, the sudden furor over prostitution was typical. As Victorian social mores came to define legal notions of “public order” and “vice,” the role of women was redefined and increasingly restricted. “Fond paternalistic indulgence of women who conformed to domestic ideals was intimately connected with extreme condemnation of those who were outside the

¹⁸ Stansell, *City*, 173–4 and 276–7.

¹⁹ Lane, “Crime,” 160.

²⁰ Stansell, *City*, 194–5.

²¹ Allan Silver, “The Demand for Order in Civil Society,” *The Police* ed. David J. Bordua (New York: John Wiley and Sons, 1976) 21; and Lane, *Policing*, 223.

bonds of patronage and dependence on which the relations of men and women were based.”²² As a result, women were held to higher standards and subject to harsher treatment when they stepped outside the bounds of their role. Women were arrested less frequently than men, but were more likely to be jailed and served longer sentences than men convicted of the same crimes.²³ Enforcement practices surrounding the demand for order thus weighed doubly on working-class women, who faced gender-based as well as class-based restrictions on their public behavior.

At the same time, the increased demand for order came to shape not only the enforcement of the law, but the law itself. In the early nineteenth century, Boston’s laws prohibited only habitual drunkenness, but in 1835 public drunkenness was also banned. Alcohol-related arrests increased from a few hundred each year to several thousand.²⁴ In 1878, police powers were extended even further, as they were authorized to arrest people for loitering or using profanity.²⁵ In Philadelphia, meanwhile, “after the new police law took effect, the doctrine of arrest on suspicion was tacitly extended to the arrest and surveillance of people in advance of a crime.”²⁶

Police scrutiny of the dangerous classes was at least partly an outgrowth of the preventive orientation of the new police. Built into the idea that the cops could prevent crime was the notion that they could predict criminal behavior. This preventive focus shifted their attention from actual to potential crimes, and then from the crime to the criminal, and finally to the potential criminal.²⁷ Profiling became an inherent element of modern policing.

²² Stephanie Coontz, *The Social Origins of Private Life* (London: Verso, 1991) 222.

²³ Coontz, *Social*, 222.

²⁴ Richardson, *Urban*, 30.

²⁵ Lane, *Policing*, 173.

²⁶ Allen Steinberg, *The Transformation of Criminal Justice* (Chapel Hill: University of North Carolina Press, 1989) 152.

²⁷ Monkkonen, *Police*, 41.