

Securing the future Networked policing in New Zealand

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Police Act Review and Victoria University of Wellington's School of Government

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Emerging principles for policing in New Zealand - a review of the historical background

When Captain William Hobson landed in Aotearoa to establish British sovereignty over the land in January 1840, he brought with him just five mounted troopers of the New South Wales Mounted Police to help him keep order in the new colony. It quickly became evident, however, that a much more substantial and organised force was going to be required to maintain order both within the scattered and rapacious European settlers here, and between the settlers and the indigenous Māori population. So in October 1846, an ordinance was promulgated for the establishment of an armed Constabulary Force for the colony.

The Constabulary Force was essentially a military organisation, modelled on the Royal Irish Constabulary that Britain had established to pacify the Irish population and suppress any resistance to British rule there. Although styled "Constables", the members of the Constabulary Force were in essence trained, mounted soldiers equipped with military rifles. Section 4 of the 1846 Ordinance made it clear that the principal duty of the Force was to "suppress all tumults riots affrays or breaches of the peace, and all public nuisances and offences against the law, in any part of the Colony where they may be on duty."

This policing model, which Britain had introduced into all of its colonies during the 19th Century, remained the dominant policing model in New Zealand

throughout the 19th Century, such that by the end of the Century the police were still be described as “the right arm of the ruling class” and “efficient and proactive agents of official morality” (Hill, 1995: 30 & 31).

It was not, in fact, until 1886 that a process of moving away from this model of repressive policing began with the passage of the *Police Force Act* and, in the following year, of new *Police Regulations and Instructions*. The most important feature of this new regime was that for the first time it separated the police force from the armed militia, and began the process of establishing the police as a *civilian* body whose members were not routinely armed with firearms. I say “began the process” because this was not a transformation that occurred quickly, but rather one that unfolded gradually over a period of about 40 years. Initially, recruitment to the new police force was to be exclusively from members of the Permanent Militia, and it was not until 1897 that this requirement was relaxed in favour of recruitment of civilians.

The Force was responsible to the Minister of Defence until 1896, when responsibility passed to the Minister of Justice. In 1912, a separate office of “Minister in charge of Police” was created, but these three portfolios - Minister of Justice, Minister of Defence and Minister in charge of Police - were consistently held by the same person in every administration until 1935 when, for the first time, the portfolio of Minister in charge of Police was held by a minister who was not also Minister of Justice and Minister of Defence.

The 1886 Act and Regulations and Instructions were modelled largely on the more civilian London *Metropolitan Police Act* of 1829, rather than the more military Royal Irish Constabulary model. But the first three Commissioners of the Force were military officers, and it was not until ten years later that the first Commissioner who came from a police (the London Met) rather than a military background was appointed.

The Regulations and Instructions, however, portrayed the Force as primarily a preventative force, reflecting the policing principles that Sir Robert Peel and the two first Commissioners had prescribed for the London Metropolitan Police some sixty years earlier. The Force was divided into two “branches” - the “preventive

branch", the attention of which was to be "specially directed, in the first instance, to the prevention of crime", and the "detective police", whose attention was to be "principally directed to the detection of crime, and to a special surveillance of the criminal class".

Despite this, as with all the British colonial models of policing, the New Zealand Police Force retained a quasi-military tradition and ethos well into the first half of the Twentieth Century. Front line officers (all men) were subject to rigid discipline, were housed in barracks, were regularly required to engage in marching and drill, and were not, for instance, permitted to get married without the permission of the Commissioner. Despite the recognition of a measure of "constabulary independence" and individual discretion that every member of the Force supposedly enjoyed, the Force was managed according to an hierarchical "command and control" philosophy, in which obedience to superiors was the most salient precept. Force members were regularly transferred to different locations to avoid them becoming overly "familiar" with those whom they were to police.

Although crime prevention was supposed to be the primary focus of policing, this was not reflected in the everyday realities of police work, and by the middle of the Twentieth Century, the principal focus of policing in New Zealand, as in every other country of the Commonwealth, as well as the United States, was reactive law enforcement rather than proactive prevention. This was accomplished through the despatch of officers on routine patrol to "occurrences" or "incidents" of which the Force became aware mostly through calls by the public to its central or regional communications and despatch centres. Proactive crime prevention was very much a secondary focus, undertaken when time and resources permitted after response to incidents had been attended to.

The first 120 years of policing in New Zealand following its initial colonisation in 1840 can thus be seen to have involved two roughly equal 60-year periods, reflecting two quite different philosophies, or fundamental principles, of policing. The first 60 years involved the systematic, militaristic and armed imposition on an often unco-operative and sometimes actively resistant populace (Pākehā as well as Māori) of a colonial order determined by the ruling Pākehā elite. While

that tradition lingered on for some time during the next sixty years, it was gradually superseded by a philosophy of unarmed "policing by consent" in which essentially reactive law enforcement policing was mobilised in response to calls for service from a more or less co-operative and supportive public.

Of course, this is an over-simplification; there were many moments in which more aggressive, proactive and repressive policing approaches were employed in response to perceived threats to public order and to suppress public protest. Nevertheless, these were occasional events and do not detract from the general pattern of routine policing that I have described.

Which brings us to the last forty years or so since the last major revision of police legislation embodied in the *Police Act* of 1958. The 1958 Act did not introduce any very significant changes to the essential principles that had guided policing in New Zealand for the preceding 50 years or so. Indeed, the major functions of the Police, let alone the fundamental principles of policing, were nowhere spelled out in the Act. It modernised provisions concerning internal employment relations and management, but the only change of any significance that indicated any shift in the philosophy of policing was the rather symbolic dropping of the word "Force" from the name of the organisation, which henceforth was to be known simply as the New Zealand Police.

In the intervening years since the 1958 Act was enacted, however, some very significant developments have occurred which have caused police policy-makers and legislators in many countries to rethink the designated role of the police, the principles that should govern the policing that they do, and their relationships both to the government and to the communities that they police. It is these developments that provide the basis for the view that the time has now come for a "first principles" re-write of the Act.

Most important of these have undoubtedly been radical changes in attitudes towards the role of the state, and relationships between the state and its citizenry. Specifically, from the 1960's onwards, expectations of public involvement in governmental decision-making, and of public accountability for, and transparency of, such decision-making have dramatically changed. The idea

that government could be conducted by ruling political and bureaucratic elites without significant consultation of, and accountability to, the public gave way to growing demands for consultation, accountability and transparency. Although they clung to their claim to political “independence” with respect to the application of the law in individual cases, in other respects the police were just as vulnerable to such demands as other public servants. The idea, reflected in Section 7 of the *Police Regulations*, that the police’s first duty was owed to the Government increasingly gave way to a conception of “community” or “community-based” policing in which the police’s first duty and accountability was to be to the communities it policed. Expectations began to develop that citizens and “communities” should have a direct and significant “voice” with respect to police decision-making, policy and priorities, and that policing should be tailored to the particular (and varying) articulated policing “needs” of the various communities they policed.

Governance generally came to be viewed not so much as “rule” imposed by the elected government, as the co-ordination and provision of public *services* to meet public demand. Police organisations accordingly came to be thought of as *police services* rather than as *police forces*. In the 1980’s this trend was further entrenched through the adoption, by the Lange government, of a neo-liberal conception of governance that has come to be known as the New Public Management, in which, mimicking the private sector, public services are “purchased” by government through audited quasi-contractual agreements entered into with service providers such as the police.

This “new contractualism”, as it has come to be referred to (Vincent-Jones, 2006), and the private sector mentalities that inspired it, quite naturally gave rise to the idea of a “market” or “quasi-market” for the provision of public services, in which the public sector would have to compete with potential private sector providers for “market share”. Privatisation and “contracting out” of public service provision became an increasingly common feature of government. While the Police have been more successful than many other parts of the public service in resisting such trends, they have certainly not been entirely immune from them, and the idea that the provision of policing services should be a monopoly of the public police has increasingly given way to a conception of “plural” policing

provision in which the public police are, at the very least, expected to work in partnership with other public, private and voluntary sector providers in the provision of policing services to the communities they serve.

But this was not all. Relaxation of previously highly restrictive immigration policies led to an increasingly diverse, multicultural and multi-ethnic society, in which there was a dilution of the earlier moral consensus with respect to acceptable and unacceptable behaviour, and in which toleration of "difference" became a guiding social precept. For the police this posed two great challenges: in the first place, they were expected to demonstrate much greater "cultural sensitivity" and responsiveness in doing policing; and in the second place they faced growing demands to recruit their personnel from a broader social pool that would enable the police organisation to "reflect" the diverse communities that they police. And the "communities" to which such demands related were not just geographical communities, but included "identity" communities such as gay and "lifestyle" communities.

In New Zealand, this emerging multiculturalism was matched by a resurgence of Māori political activism that included a demand that, in the performance of their duties, the police should take particular account of the special place and historical entitlements of Māori in New Zealand society. Part of this involved the expectation that in performing their duties the police should recognise and respond to the preference of Māoris for an alternative, "restorative justice" approach to policing that challenged the traditional European approaches of the New Zealand Police.

And in the 1990's, a growing regional consciousness led the government to commit New Zealand Police resources to foreign policing assistance to Pacific Island nations in conflict and post-conflict situations, in which the protection of human rights, rather than simply efficient law enforcement, was of paramount concern.

And finally, developments in the first decade of the 21st Century have generated demands for the New Zealand Police to develop appropriate and effective responses to growing international threats from terrorism, the drug trade etc. on

a hitherto unheard of scale, and to develop the necessary co-operative international linkages to meet these new policing challenges. This has led to the development of "harder", more militaristic and intrusive policing practices that are not easily reconciled with the "softer", more "community-based" policing style that has evolved domestically. And this, as well as the overseas missions in the Pacific Islands, have both led, once more, to closer co-operation between the police and the military.

To sum up, over the 160-odd years since "modern" policing was first introduced into New Zealand in the 1840's, it has evolved from a military, repressive approach, through a traditional civil, law enforcement approach, to a more "community-based" approach, placing greater emphasis on prevention and community policing in a plural policing environment. But in recent years, with respect to some policing functions, we have seen a resurgence of "harder", more coercive and intrusive policing practices, with renewed collaborations with the military. Each of these different approaches to the police role, and the policing task, has been based on rather different fundamental principles and values. But it is important to recognise, too, that each period has left traces of the philosophy and ethos that guided it, on the evolving historical tradition and ethos of the police organisation - a process of organisational "sedimentation" that continues to influence the organisation's view of itself.

I emphasize that most of the developments during the last forty years or so that I have outlined have not been unique to New Zealand, but have been experienced to varying degrees and at different paces in almost all of the Westminster-style democracies with which New Zealand might usefully be compared. And in many of those countries they have been the basis for major overhauls of policing legislation enacted during the immediate post-World War II period. In Canada, for instance, the late 1980's and early 1990's saw such legislative reform in almost all of the provinces, to whom responsibility for policing is constitutionally assigned, as well as in the legislation governing the federal Royal Canadian Mounted Police. Similarly, Britain has enacted significant revisions to its policing legislation four times since the 1950's, and the 1990's saw major revisions to the policing legislation of most of the Australian States, as well as with respect to the Australian Federal Police.

Many of these legislative initiatives have followed, and been inspired by, the reports of commissions of inquiry established to investigate particular problems experienced with the police. In Canada these have frequently concerned the difficulties that the police there have experienced both in adapting to the demands of an increasingly multicultural population, as well as to the growing public recognition of the special place and needs of Canada's three main Aboriginal groups. In Britain too, police reform has followed investigations into the police's relations with members of minority ethnic (especially Black) communities, and tensions raised, for instance, by the Brixton Riots in the 1980's and the inadequate investigation into the murder of Stephen Lawrence in the 1990's. In Australia, regrettably, inquiries in many states (e.g. the Fitzgerald Inquiry in Queensland and the Wood Royal Commission in New South Wales) have been instigated to investigate allegations of police corruption, undesirable political interference in policing, and excessive police violence, as well as deteriorating relations between the police and Australia's Aboriginal communities.

In almost every case, reform of police legislation has focused particularly on several or all of the key areas that the developments that I have discussed above in respect to New Zealand have highlighted as requiring a reconsideration of the police role and the principles by which policing is undertaken. These include: improved and closer relations between the police and the communities that they police, including giving communities a greater "voice" with respect to policing policy, priorities and key decision-making; enhancing the public, political, legal and administrative accountability of the police; diversifying the ethnic and cultural composition of the police, and improving officers' education and training with respect to the needs of increasingly multi-ethnic communities; adapting police administration and governance to the demands of the New Public Management; enhancing the preventative capabilities and priorities of the police; developing more effective partnerships with other public, private and voluntary sector providers of policing and policing-related services in the increasingly plural "policing family" (as it has come to be described in the U.K.), and developing general principles for the allocation of responsibilities for policing provision as between such potential providers.

Undoubtedly (in my mind, at least) some of the most progressive and radical proposals for reform of policing and of police legislation in these respects have come from South Africa and Northern Ireland. I do not propose to dwell on these here, however, as I'm sure that my colleague, Professor Clifford Shearing, who has been intimately involved in the police reform processes in both of these countries, will have much to say about them in his presentation this afternoon.

One of the most notable features of much of this new policing legislation has been the inclusion of broad statements spelling out, often for the first time, clear statements of the role, functions and purposes of the police, and the general principles that should inform their policing policies and activities. In Canada, the Ontario *Police Services Act* of 1990 was the first to include such provisions, and its example has since been followed in many other provincial jurisdictions. A similar trend can be discerned in the Australian policing legislation of the 1990's and, I think, to a lesser extent in the revisions to the English police legislation in 1996 and 2002.

These trends reflect two fundamental points. In the first place, they reflect the view that the traditional, rather secretive processes for determining policing policy, priorities and principles are no longer appropriate or acceptable as a basis for policing societies and communities in the 21st Century. And secondly, they reflect the growing conviction that such matters are far too important to be left to be determined by the police themselves or the government bureaucrats and politicians involved in police governance.

There is no doubt in my mind that both of these conclusions are equally applicable to New Zealand in 2006, and that they confirm both the necessity and the desirability of a fundamental "first principles" reform of its policing legislation. The challenge will be to fashion legislation that takes account of the different roles the police are nowadays expected to fulfil - a "democratic", "community-based" style of policing, in a "plural policing" environment domestically, and a "harder" more intrusive and coercive style, often in collaboration with military forces, in fulfilling their new international obligations with respect to "the war on terror" and securing stability in some of the troubled states in the Pacific region.

Fortunately, there is something of a treasure trove of relevant overseas experience in this respect on which New Zealanders can usefully draw in their efforts to fashion new "made in New Zealand" policing legislation to meet the changing circumstances and demands for policing services here at the beginning of the 21st Century. The recent (2006) report of the Canadian Law Commission on the future of policing in Canada (Canada, Law Commission), and the 1999 report of the Patten Inquiry in Northern Ireland, for instance, may well prove to be helpful resources in this respect.

It is important, however, not confuse reform of police legislation with reform of policing, or to place reliance on legislative reform as a sufficient basis for reform of the police and of the way policing is done in New Zealand. At best, a modernised *Police Act* (or, better still, a *Policing Act*) provides an important affirmation of the fundamental principles and values that Kiwis, through their Parliament, have agreed upon as the basis for policing in the years to come. But, valuable as this is as a first step, political commitment and a willingness to invest the necessary resources to implement these principles and values on the ground will be essential if genuine reform of policing is to be achieved.

And finally, I would remind you, as the developments during the last forty years or so clearly illustrate, significant reform of policing often occurs quite independently of, and is not dependent on, any reform of police legislation.

Thank you for your attention.

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