

1942

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David Geeting Monroe

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### Recommended Citation

David Geeting Monroe, Legislative Needs of the State Police, 32 J. Crim. L. & Criminology 498 (1941-1942)

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# LEGISLATIVE NEEDS OF THE STATE POLICE<sup>1</sup>

David Geeting Monroe<sup>2</sup>

More than a century has elapsed since the founding of the first frontier constabularies. Out of the lawlessness of frontier days, such agencies (of which the Texas Rangers is a far-famed example) formed the genesis of one of the great police movements in modern times: the establishment of state-wide police departments. But the causes which necessitated the development of the early frontier constabularies pale beside the multiplicity of demands which compelled the establishment of present day state police departments.

It has become commonplace to say that we are living in a world of rapidly changing social and economic conditions, which have rendered traditional methods of policing obsolete, or have required important adjustments in them. Reformation of older techniques and the adoption of new enforcement methods symbolize the prevailing trends of the last three decades. Older functions have assumed specialty roles in their own right. New functions, such as traffic flow regulations, traffic accident reduction and juvenile delinquency correction, are taking accredited places in the police program. Structurally, police departments have broadened to make way for the development of new and important auxiliary func-

tions, as for example, communications and records. Those demands, in turn, require leaders schooled in the broad phases of administration and a personnel skilled in the specialized fields of policing. A new personnel tradition, based upon intelligence, has become indispensable to the protection of life and property.

Of exceptional significance, also, are the fundamental changes which have occurred in territorial enforcement. In many respects the transition from a purely local type of enforcement, which has been our heritage from early colonial times, to a co-ordinated local-state enforcement, is the acknowledgment that the century old system of local and county policing no longer suffices. Dissimilarities in enforcement by countless hundreds of local agencies retarded concerted action over any extended area. Difficulties of identifying wanted criminals and of blocking their escape in a day of far-flung road structure and swift transportation were almost insurmountable. In many instances, the sheriff-constable system was unable to stave off aggravated crime in rural areas. Moreover, as the universality of motor vehicles became increasingly apparent, a new era in transportation unfolded. Great stretches of

<sup>1</sup> Read before Section of Criminal Law of the American Bar Association, Indianapolis, Sept. 30, 1941.

<sup>2</sup> Assistant Director of Training in charge of Research, Northwestern University Traffic Institute.

highway and byway reached out to become accident traps for countless hundreds of citizens who lost their lives or suffered serious injury. The toll of death and injury continued to mount in the absence of state-wide machinery to control drivers and pedestrians. Finally, in times of grave international crisis, the protection of life and property against anti-social forces within the country and enemies from without urges on a re-emphasis in territorial policing. That the state, therefore, should emerge to participate in the enforcement process appeared inevitable. Thus, policing by the state governments can no longer be considered a temporary expedient, designed to tide enforcement over critical times. Enforcement by state police has come to stay.

In many respects the work of a police department hinges upon adequate legislation. The authority to enforce the law, the major details of departmental organization, the techniques of management employed, the channels of co-ordination with other agencies are predicated upon legislation. Such is the importance of well-planned legislation that while a police department may pursue its tasks despite poor supporting legislation, a full measure of police responsibility is assured only when a department is backed by the full force of sound legislative sanction. In acknowledgment of this fundamental role which effective legislation exerts in the police process, it became the responsibility of the Committee on Police Training and Merit Systems of the American Bar Association during the past year to make an extensive inquiry into the

comprehensiveness of present legislation upon which enforcement by 48 state police departments relies.

We found, in the first instance, that absence of similar policies and procedures is a characteristic feature of state police functioning. Striking differences are observable in the content, in ideologies toward enforcement, and in emphasis. Of exceptional significance is the fact that legislation is frequently lacking in respect to many matters of vital importance in enforcement. Let me point out some of the principal legislative factors which require attention.

#### *Authority and Jurisdiction*

The basis of police action by which a state police department functions, is its authority to enforce the law. Establish a state police and at the same time shear it of comprehensive authority to preserve the peace and you necessarily limit its sphere of action. Authority is required in the field of criminal prevention and repression, in the field of motor vehicle law enforcement and frequently in a variety of regulatory and investigative activities. But present authorities of most of the state police departments are by no means as extensive. Approximately a third of the departments are provided authority to enforce only motor vehicle laws. In a number of other departments, the organization and structure of the department is so legislatively designed as to preclude enforcement on any major scale save in enforcing motor vehicle laws. Similarly, significant restrictions are found in jurisdiction. In many instances, the state police are enjoined from enforce-

ment in strikes and lockouts. Enforcement of the law within the limits of municipalities by the state police is usually prohibited except when aid is requested by local authorities. Not infrequently the work of a department is restricted to arterial highways. Thus, enforcement in most states is by no means state-wide in its application.

### *The Chief of Police*

As executive head of his department, the chief of a state police unit is responsible for the administration of one of the major state functions. His are responsibilities which demand not only police and administrative skill of high order, but an ability to cope with the many forces of complex character and varying intensity which can disrupt or cripple enforcement. Thus, legislation which leads the way to the selection of a well-qualified leader ranks among the important obligations of those responsible for state-wide enforcement. But careful selection will not in itself guarantee the kind of leadership required. The chief must be granted a reasonable measure of control over his department. Otherwise his status is that of a mere figurehead. Finally, effective leadership cannot be attained if the office is vulnerable to political attack. As George William Curtis has said: "Partisan prostitution of the public service is radical treachery of popular government because it makes private interest and not the public welfare the motive of political action." Open the way to a vicious control over the police head and you have gone far to demoralize and corrupt police action.

Seldom are specific qualifications for the position of police executive included in state police enactments. Where they occur, they are usually found in the more recently established departments. Regarding the method of appointment, there is no consensus. Sometimes the police head is appointed by the governor, sometimes by the governor with the consent of the legislature, sometimes by board or commission, sometimes by the head of some other department. Tenure of office is frequently defined in terms of the significant phrase, "The police head shall serve at pleasure." While the method of appointment is usually prescribed, one looks in vain, in the majority of states, for statements defining removal procedures. States are definitely in the minority which require that discharge may be made only "for cause" and that the formalities of a hearing be accorded. Most police heads serve "at will" which is another way of saying that the office is subject to the many forces which operate against effective policing. Absence of effective tenure statutes accounts, at least in part, for the rapid turnover in leadership. The average police executive is in office less than three years. As to salaries, legislative assemblies have been unusually conservative. Annual emoluments vary from \$2,500.00 to \$10,000.00 and nearly 70 per cent of the chiefs receive a salary of under \$5,000.00 per annum. In light of the importance of the state police function and need for police and administrative skills of high order, the compensations awarded are undoubtedly too low.

Statutes are not in accord as to the management powers to be conferred on the police executive. In some instances broad authorities are conferred which enable the police head to administer the full details of police operation. But in most of the states, principal charge (directly or indirectly) of the police function is resident in some other official or officials. Such a situation has undoubtedly militated against vigorous and planned leadership. Experience has shown that the responsibility for police action should be fixed and that diluted leadership has no place in enforcement.

### *Personnel*

I think often of the words of Herbert Spencer, who said: "Policemen are soldiers who act alone. Soldiers are policemen who act in unison." For it is axiomatic in enforcement that successful policing cannot be attained unless every effort is made to secure maximum per man accomplishment. If this is to be accomplished, legislation must direct attention to a number of prerequisites. Men suited by aptitude as well as intellect must be chosen. Proper training is essential to enable them to cope with the complexities of modern day policing. Moreover, compensation must be sufficient to permit reasonable standards of living. Securities against unjust demotion or discharge must be established. Reasonable securities as to sick leave, time off, disability and retirement become compulsory. These are some of the personnel problems with which legislation must be concerned.

In terms of requirements as to qualifications for enlistment, the regulations range from the relatively simple—which permit selection of personnel without reference to qualifications—to comprehensive requirements which automatically exclude the unfit. Frequently an act simply states that "There shall be appointed—persons." Educational qualifications are found only in a minority of the states and less than a dozen acts require the recruit to have had a high school education. Only a few of the state acts prescribe or outline the process of selection. It cannot be too strongly emphasized that the establishment of sound examining techniques lies at the heart of the recruitment process. In a profession where physical strength and good health are a vital need, the use of physical examinations at the recruit level is of paramount importance. In a profession which demands an intelligence above the average, means must be employed to weed out the intellectually unfit. And in a profession in which the temptation to commit indiscretions is ever present, only persons of known integrity must be permitted to enter.

As the situation is today, the average selection process weeds out the unfit but does not always select the singularly well qualified. The typical applicant must pass through a physical examination which sometimes is directed to physical co-ordination and muscular attainment. He must pass through an intelligence examination sometimes relatively simple, and at other times exceptionally difficult. A character inves-

tigation is not unusual. Formal merit systems are legislatively recognized in eleven states. But in the majority of states, absence of effective personnel legislation opens the door to practices which are not always conducive to the best interests of enforcement.

"He who appoints, rules," is a truism which has especial significance in enforcement. For, whoever controls the appointment, promotion and discipline of the rank and file in the long run "determine the functioning of the police force, no matter how such force may be constituted and organized," in the words of a well-known police authority. Legislation in regard to the control process is a striking illustration of the many viewpoints maintained. As to the authority to appoint personnel, legislation in approximately a third of the states confers this on the police executive. In eleven departments personnel is subject to civil service or merit system. In the remaining departments (more than a third) appointment is vested in a variety of officials boards and commissions. Thus appointment of personnel is not the prerogative of the police head. From the point of view of management, enforcement will ordinarily suffer, since executive leadership is a factor which is indispensable to the ultimate success of policing. A goal of legislation must be the establishment of responsible leadership immunized from the beck and call of the party in power and endowed with comprehensive authority over personnel.

Industry has long recognized the indisputable importance of training the

employee. Required studies in college or university, or work in specialized fields are often prerequisite to appointment. In many instances the employee must undergo a period of training with his company before he is deemed capable of performing the tasks assigned him. Similarly, those engaged in the task of enforcement are rapidly discarding the century old theory: "Give a policeman a stick, a badge and a gun, and you have supplied him with the knowledge essentials of enforcement." We have come to the realization, in other words, that to permit the untrained and untried recruit to experiment in enforcement invites disaster. Nothing imperils the standing of a police department or does more to destroy public regard than enforcement poorly done. Without public support, a police department cannot hope to function effectively. Financial backing is wanting, open flaunting of the law ensues and difficulties of enforcement are intensified a thousandfold. Thus it may well be said that effective training must be listed among the all important personnel practices. Seldom, however, are legislative provisions sponsoring training programs to be found. For the most part training has developed in the absence of supporting legislation. Unquestionably, sanction of both recruit and in-service training by legislation would do much to raise the training level.

In state policing, as in other fields of the public service, compensation is a factor of prime importance in determining the type of personnel and the effectiveness of their performance. As

a rule capable men will not be attracted to the police service if the salaries offered are below those available in other positions for which they are fitted. Nor will they remain unless reasonable advancements are forthcoming.

References to salaries and wages are found in all the statutes. Sometimes the basic salary is incorporated in the basic act under which a department is founded. Such policies tend to freeze salaries and to prevent necessary adjustments. Again it is doubtful if the importance of adequate salaries has been given sufficient legislative attention. Note, for example, that the average patrolman begins at a salary of \$1,480.00 per annum, the average sergeant at \$1,963.00, the average lieutenant at \$2,294.00, and the average captain at \$2,739.00. Infrequently are provisions encountered which provide for salary increases "within rank."

That the police service demands proper conduct and effective performance from each and every member is unquestioned. Therefore, when violations of professional ethics occur, or when sub-par performance is disclosed, disciplinary action must be taken. On the other hand, the disciplinary process must be designed to guard personnel from unfair and unwarranted penalties. Permit unhindered and unwarranted fining, demotion, suspension and discharge without reasonable securities and you destroy that spirit of mind which is so necessary for outstanding performance. If such conditions persist, the disciplinary process becomes a two-edged sword which plays havoc with departmental efficiency. Therefore, the disciplinary process must be

sufficiently inflexible to protect personnel from unwarranted penalties, and sufficiently flexible to permit the administration to impose just penalties on the guilty. Somewhere between the two extremes there is a system of control which will attain this dual objective.

But I am constrained to say that adequate precautions against unwarranted disciplinary action have been enacted in less than half the states. Dramatic battles have been and are being fought to control the disciplinary process. The battle of partisan politics to keep disciplinary power within the reach of partisan control continues to the last ditch. Those who champion the cause of executive leadership in policing continue the struggle to vest the exclusive right to discipline in the state police head. Those who sponsor the establishment of civil service agencies fight to delegate this right to such bodies. The tug of war between these several forces has left an indelible mark on state policing and accounts for the variety of forms and kinds of disciplinary authorities presently operating in this field. One can review the present situation with two statements which by no means flatter our progress in this important field of enforcement: (1) In most jurisdictions, the disciplinary process varies according to time and place—its partisan implications being most strikingly noticeable at election time. (2) In other jurisdictions, which are in the minority, a variety of types and kinds of disciplinary procedures have been established which defy generalization. Some are good; some are indifferent; some are bad.

To matters of working hours, time off and sick leave, statutes usually devote a considerable measure of attention. The prevailing situation is somewhat as follows: The eight-hour day is by no means typical: the work load in most departments ranges from nine to twelve hours per day. Time off is now allowed in nearly all departments, four days per month being the average. Annual furloughs are the rule, the length ranging from two weeks to a month. Provisions relative to compensation granted employees disabled in line of duty are exceptionally variant. Full salary is paid in some departments; in others payment is by way of a flat per week or per month fee. Reference to permanent disability is found in the statutes of about two-thirds of the states. Pension systems have been legislatively approved in about half the states. Seldom do statutes call for actuarially controlled pensions. Unquestionably reasonable working hours, certain time off at frequent intervals and an annual vacation are mandatory in policing. Long hours and inadequate time off are breeding grounds for mistake and error. Again no argument is needed to demonstrate that in a profession in which danger and the elements play one of their most conspicuous roles, there is an important need for the securities offered through proper hospitalization services, sick leaves and retirement provisions. To these tasks, legislators must devote an increasing measure of attention.

#### *Positioning the Police Department*

Finally let me direct brief attention to that phase of the legislative process

relating to the organization of the state police function. Experimentation with various organizational patterns has been a notable tendency in state police legislation. New forms of organization are constantly being developed. Some are found wanting and have already been relegated to the scrap heap of experience; others have become indispensable tools in the proper enforcement of the law. As to the positioning of the various state police departments in the frame of state government, there is by no means a consensus of legislative opinion. In more than half the states, the state police agency has not been given the status of a department but remains as a branch or subdivision of some other department, as for example, the department of motor vehicles, or the department of roads and irrigation, or the department of revenue. In terms of control, eleven departments are administered directly by state police boards or commissions, 16 are controlled by the head of some other department of the state government, 19 operate under the governor's office, the police head being directly responsible to the governor. Such are the significant differences in respect to positioning. The prevailing situation indicates that much remains to be accomplished legislatively before sound organizational tactics can be accomplished. As I indicated previously, every effort should be made to vest adequate authority and leadership in the head of the police department. Diluting authority among "outer" officials is not, as a rule, conducive to effective leadership. And, since enforcement is essentially an executive function, state

police action should be directly accountable to the chief executive of the state who, by constitutional provision or legislative enactment in all the states, is charged with the preservation of life and property.

These, in brief, are some of the salient features of the state police situation. I have by no means exhausted the list of situations which require comment. Undoubtedly great strides forward have been made in many in-

stances. In others, much remains to be done. Upon those who are entrusted with the formulation of future legislative programs in the field of state policing, rests a great responsibility. We cannot forget, nor should we lose sight of the wise philosophy of John Stuart Mill, who said: "No government can expect to be permanent unless it guarantees progress; nor can it continue to secure order unless it promotes progress."



#### IN THE HEARTS OF MEN

The mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country. A calm, dispassionate recognition of the rights of the accused, and even of the convicted criminal against the state—a constant heart-searching by all charged with the duty of punishment—a desire and an eagerness to rehabilitate in the world of industry those who have paid their due in the hard coinage of punishment; tireless efforts toward the discovery of curative and regenerative processes; unfailing faith that there is treasure, if you can only find it, in the heart of every man. These are the symbols which, in the treatment of crime and criminals, mark and measure the stored up strength of a nation and are sign and proof of the living virtue in it.—From *Probation*, December, 1941.

—Winston Churchill.

"Every man's house has been called his castle. And why is it called his castle? Is it because it is defended by a wall, because it is surrounded with a moat? No, it may be nothing more than a straw-built shed. It may be open to all the elements; the wind may enter it, the rain may enter . . . but the king cannot enter," so stated Lord Chatham in a speech on General Warrants. In incorporating the anecdote in his life of Chatham, William Goodwin used the following language:

"Every man's house is his castle. And why is it called so? Is it because it is defended by a wall, because it is surrounded with a moat? No, it may be nothing more than a straw-built shed. It may be exposed to all the elements; the rain may enter into it, all the winds of heaven may whistle around it, *but the king cannot . . .*" (Italics added)—From *A Ridiculous Philosopher*, by A. Edward Newton, September, 1917, *Atlantic Monthly*. John W. Curran.