



In summer the heavy blue trousers were changed for the much lighter white "Duck" trousers.

Above are shown a small number of badges. If the reader refers to the earlier drawings, these can be seen

THE AUTHOR

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NOTHING NEW UNDER THE SUN Part 2

H. Stanford

A previous article (Vol. 17) dealt with the problems faced by modern police officers in their attempts to deal with criminals, in particular their difficulties in trying to identify, recognise and supervise offenders. The article showed that whilst the terminology might have changed and that many years had passed the actual policing difficulties were much the same in the 19th century as they are to-day. In this way it is a fact that history, whilst never exactly repeating itself, does have lessons for us all and this can be seen in the way that other issues prominent in policing and public circles in the period 1860-1870, whilst using different language, have re-appeared in recent years.

One of the main issues faced by all sectors of the judicial system in the last few years has been that of Human Rights. The right of an accused person under arrest or otherwise to have their human rights respected is often seen on the front pages of newspapers and as leading topics in TV and radio programmes. Of late this

has come to the fore as a result of acts of alleged terrorism and the needs of police in investigating such incidents. This can particularly be seen in relation to the length of time that a suspect may be detained before being charged or released as against the need for investigating officers to have sufficient time to complete their enquiries. It is currently the situation that, subject to approval from courts, terrorist suspects may be detained for up to fourteen days and there is a move, supported in some police circles, for this to be extended to at least a month. Many of us will remember, in the not to distant past, when the time limit was two days, with extensions being approved only in exceptional circumstances. It is said that the need to efficiently investigate situations, to properly use the ever improving scientific aids requires longer periods and the debate is around the need for this to take place as balanced against the rights of the accused person. How long should a suspect be detained in police custody before being charged or released?

This issue also involves what, as far as I am aware, is a general rule that an accused person is innocent until proved otherwise. Keeping a very watchful eye on all cases of this kind is a reasonably new branch of the legal profession, that specialising in Human Rights, and much of the high profile way in which this area of the law is seen can be said to relate to the persons involved. They are often themselves of a very high profile. The Human Rights Act 1998, which arose out of the European Convention for the Protection of Human Rights and drafted in the main by British lawyers, brought together much of the European legislation in this field and enabled any actions under it to be dealt with in British Courts. This was a change from their having to be dealt with in the Court of Human Rights in Strasbourg. In essence it aims to draw a fair balance between the demands and general interests of the community and the protection of individual human rights. To simplify the situation the act aims to protect the individual against heavy handed actions by the state yet is so drafted that it does not offer the opportunity for spurious defences. It is not, as thought by some sections of the public, a 'villains charter'. The impetus for the Convention and then the Human Rights Act can be said to have been the misuse of state power against the people of Europe in the second world war and is an attempt to ensure that it does not happen again.

History shows however that the public's fear of the state taking actions which would unfairly affect the individual is not new and in particular this can be seen in the direct involvement of the police in the legislation passed in mid-19th century to deal with outbreaks of particular crimes and those responsible for their commission. As early as the 1850s action was being taken to deal with released prisoners in this country as against their being transported to Australia and this situation was brought to a head in the 1860s with an outbreak, in 1862, of street robberies which were commonly called 'Garrotting'.

One of the reasons for such incidents being so newsworthy was the fact that an M P Hugh Pilkington, was allegedly garrotted in London. As a result The Times initiated a series of articles in which they attacked the so called 'philanthropists' for being soft on those thought to be responsible for the attacks, the habitual criminals. The particular court case actually showed that there was no evidence that Pilkington had been subject to a robbery but the two accused persons, both 'ticket of leave' holders, were each sentenced to three months imprisonment as suspected persons.

As a result of the publicity given to such cases parliament decided to increase the police powers of supervision of those released from prison on Licence popularly known as Tickets of Leave. The released convicts were required to report to police on being released, then afterwards on a monthly basis and to notify any changes of address. In this way it was thought that the police would be able to easily identify the criminals and be able to put a finger on them when required.

The police, as a result of powers given under the Habitual Criminals Act 1869 and the Prevention of

Crimes Act 1871, were given increased responsibility for supervising this group but the legislation was not enacted without considerable opposition, much of it based on the belief that it infringed the human rights, or individual liberties, of those concerned. In particular it can be said to have two strands, one that such an action was un-British, was continental in its approach and infringed the inalienable right possessed by all the British for freedom of action and movement. It was also considered by some that such legislation would result in the state taking undue and oppressive action against individuals, who, whilst having been convicted of crime, had served their sentences and required a fresh start so as to be able to lead an honest and industrious life.

More specific were the allegations that such supervision by police would so interfere with the rights of these released convicts that they would be unable to get employment and thus be forced to continue a life of crime. It is of interest that there were also a number of people who thought that such supervision was right and proper, should be increased, and could be carried out without being unduly oppressive. Opposition to the proposals came from three areas: some of the parliamentarians were concerned that the proposals would give the police too much power; some commentators/journalists that the detail was unworkable and released convicts often used the fact of police supervision as a reason, when on trial, for their being forced to commit crimes.

In this way Lord Houghton in 1871 in a parliamentary debate expressed his opinion that the powers would be misused by police. Greenwood, a social commentator dealing with details of the legislation writing in 1869 thought that they were so vague as to be unworkable and earlier, in 1856, one Charles Hunter, standing trial at the Old Bailey, blamed police for so persecuting him that he was unable to obtain employment. These views were not universally held and one commentator, a Magistrate from Gloucester, Baker, was in favour not only of the proposals but also suggested that they be taken a stage further and that employers should be informed if any ticket of leave holder was seen to be in their employment. Save for very special circumstances this later course was not adopted at least, in the Metropolitan Police Area, although a suggestion that police should be able to monitor work places was made by a District Superintendent. These allegations of police oppression continued for some years and despite some support from The Times became so serious that the Metropolitan Police in the form of the then Commissioner, James Monro, issued a pamphlet so that both the public and other police forces could see the way in which they operated in such situations.¹

He outlined the fact that in 1880 a specialist branch had been established to deal with the released convicts and pointed out that far from being entirely concerned with enforcing the law the police actually went some considerable way to help released convicts. Most noticed that this was by finding employment for a considerable number and on occasion supplying money in cases of urgent need.

Then, as now, the police can be said to have been in a

'No win' situation. If they did not properly supervise released convicts who went on to commit crimes they could be accused of neglecting their duty, if the supervision was too close it could be called oppressive or to use modern terminology result in harassment.

An interesting example of the way that allegations could be made in these situations, and a reply from police given, can be seen in the case of Benson. He had been imprisoned, along with three senior Metropolitan CID officers, in 1877 for fraud and alleged that he had been followed on release from prison, that his residence was being watched and that the police were acting not only against his human rights but also in direct contravention of the conditions laid down in the licence upon which he had been released. The police reply was to the effect that he had indeed been kept under observation and that this was for a number of very good reasons. These were that they were awaiting an extradition warrant from France, that Benson was thought to be involved in planning crime and that he was attempting to corrupt police officers. Just how many of these latter issues could be substantiated is not known as Benson, perhaps displaying his intentions, gave the police the slip and disappeared apparently to the USA. Having managed this it is possible that the level of observation kept on him was not as severe as he suggested.²

To-day the police have to investigate very serious

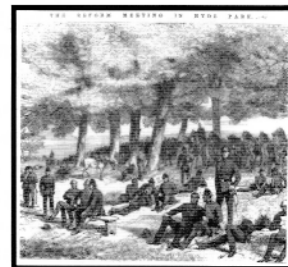
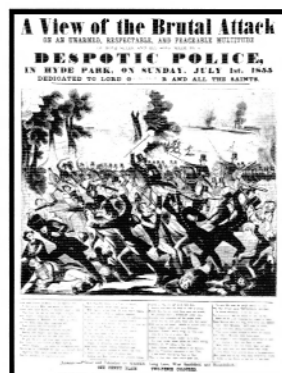
allegations, far more important than any single offence or robbery etc, yet they are constrained by the limits imposed as to the length of time they can detain a suspect. If they do not act to protect the public they are to blame, if they detain suspects longer than many in the human rights field consider to be necessary they run the risk of losing the case and having to release potential terrorists back onto the streets. It is perhaps peculiar to this country that such situations should arise yet it can be argued that one of the lessons to be learnt from recent history is that to give the state or any of its organs, the police are just one example, too much power can lead to situations where the rights of individuals come to mean very little. It is argued that once the rights of an individual are ignored there is a danger of a police state. On the other hand there is also the fact that to-day's police are faced with problems not encountered by their predecessors and arguably terrorism is another case where the legislation needs to catch up with reality.

¹ For a good discussion of this situation as regards the legislation see Emsley. *Crime and Society in England 1750-1900*. 2 edition (London: Longman 1996.)

² See Monro. J. 'Causes that led to the several enactments relative to Penal Servitude and the Prevention of Crime Acts.' Published 1886 by the Metropolitan Police National Archive (PRO.), HO 144/184/A45507.

ROD ELWOOD POLICE PRINTS

I keep a large stock of police oriented prints, pictures and other ephemera. I have many antiquarian originals that cover most aspects of policing. These include the subject matter of courts, prisons, magistrates, CID, Dogs, Mounted Police, Women Police, Transport, cartoons, Vanity Fair etc. I have also acquired a good selection of miscellaneous pictures that include photographs of almost all the original London Police Stations



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