



Governing the Police

**Experience in
Six Democracies**

David H. Bayley and Philip C. Stenning

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To my daughters Jennifer and Tracy, for their love, understanding,
and good sense.

David H. Bayley

In memory of my early mentor, the late Professor John Edwards
(1918–1994), who inspired me to pursue an academic career, and
instilled in me values which have guided me throughout it.

Philip C. Stenning



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Contents

Acknowledgments	ix
1 A Democratic Dilemma	1
Part I: Contexts	
2 When Things Go Wrong	13
3 History and Research	43
4 Settings and Systems	71
Part II: The Practice of Police Governance	
5 Governing at the Cutting Edge	95
6 Advice about Managing	127
Part III: Re-thinking Police Governance	
7 Why Governance Fails	145
8 The Changing Contexts of Governance	159
9 Improving Police Governance	183
Index	209



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1

A Democratic Dilemma

Every democracy confronts a fundamental problem: how can elected governments create and manage police so that they act in the public interest while avoiding the temptation to use them for their own partisan advantage? This book examines how six English-speaking democracies are dealing with this problem. It describes how frequently disagreements arise between supervising politicians and operational police commanders, what issues are involved, and how they are resolved. The book focuses particularly on the daily, informal interactions between politicians and police as they balance their respective obligations. By studying the problem comparatively among countries, the book assesses the factors that help to manage the relationship in the public interest.

In this book, we examine government's relations with the public police—police that are created, supported, and directed by government. These are the police that the public relies on to respond to emergencies, control disorder, and investigate crime. Their senior commanders have various titles: chief, commissioner, chief constable, superintendent, chief superintendent, director, and director-general. For simplicity, we will refer to all of them as “chiefs.”

In democratic countries, police are accountable to government; politicians have ultimate responsibility. At the same time, politicians can misuse the police. Their oversight can be inept, abusive, illegal, and partisan. The democratic dilemma is to ensure that elected governments hold the police to public account while not at the same time abusing their authority. The dilemma has been described in various ways—political control versus operational independence, accountability versus professionalism, and policy formulation versus operational implementation. However described, getting the balance right is not easy, particularly because it depends on changes in circumstances, political as well as social, that cannot always be foreseen.

We will examine the balance between political accountability and understandings of police independence in six English-speaking democracies—Australia, Britain, Canada, India, New Zealand, and the United States. In addition to being democratic, these countries have legal systems based on the Common Law and all, except obviously one, have been British colonies. India is the most different in two respects: it does not have a developed economy and, although crime is officially reported as relatively low, only it is experiencing persistent, organized violence directed against government and the police.

Including “Britain” raises an important terminology issue. The United Kingdom comprises England, Wales, Scotland, and Northern Ireland. It is often referred to incorrectly as Great Britain or even more simply as Britain. By and large, the laws, forms of government, and customs are similar throughout. There are, however, important differences currently between England and Wales, on the one hand, and Scotland and Northern Ireland, on the other. Since we interviewed police chiefs only in England and Wales, our use of the term “Britain” in this book refers only to England and Wales, and not to the other elements of the United Kingdom.

With respect to police governance, Britain presents a difficulty as well as a unique opportunity. In 2011 the system of police governance changed radically in England and Wales. The local Police Authorities, which were part of the so-called “tripartite” police governance system consisting of Police Authorities, Home Secretary, and chief constables, were replaced by directly elected local Police and Crime Commissioners. Thus Britain offers an opportunity for before-and-after observation of a planned and very significant change in police governance. We will refer to the current system as “new” Britain and the one that was superseded as “old” Britain. While the information about “old” Britain is extensive, information about “new” Britain is not. Because the change of governance is so recent, we are unable to say anything definitive about its impact. None of our other five countries has experienced a similarly radical transformation in police governance in recent years.

With one exception, police in our sample are organized at several levels of government—national, state/provincial, regional, and municipal. Only New Zealand has a single centralized police system, therefore a single “chief” interacting with the government. In the other countries a direct political–police relationship occurs at all levels. We have chosen not to investigate the governance of national police agencies unless those agencies also do street patrols and respond to calls-for-service from the public, that is, provide services to individuals rather than exclusively to government, as, for example, the FBI in the United States and the Central Bureau of Investigation in India. We have, however, included the Australian Federal Police (AFP) and the Royal Canadian Mounted Police (RCMP). The AFP serves as the law enforcement arm of the Australian government but also bears primary responsibility for public safety in Canberra, the Australian Capital Territory. The RCMP assumes

responsibility for general-duties policing under contractual agreements in eight of the ten provinces and in several municipalities.

The book does not examine all the disagreements that may arise between politicians and chiefs. We focus on a particular subset, namely, where they disagree about who's in charge. Specifically, where politicians try to direct the police in ways they should not, where police defend their operational prerogative, and where police claim too much independence and try to evade legitimate oversight and political accountability. More broadly, we are interested in whether there are principles of law or custom that limit disputes or whether politicians and police chiefs negotiate the balance again and again according to their own convenience and understanding.

Our analysis draws on many sources of information—scholarly writing, official reports, legal opinions, media sources, legislative and other public inquiries, judicial decisions, memoirs, biographies, job advertisements and descriptions, employment contracts, conference reports, and orders from governments. Major writing on the political-police relation is reviewed in detail in chapter 3. Our book's unique contribution to this writing is to examine police governance as experienced by police chiefs and to do so comparatively among a sample of democratic countries.

As part of the research for this book, we conducted personal interviews with senior police executives (mostly chiefs), both serving and retired, in each of the six democratic countries. We did this in order to explore in practical detail the nature of the governance relationship, to get at the nitty-gritty of what was being asked, what was resisted or resented, what was at stake, what process was followed, and who blinked. We conducted over 100 interviews covering all six countries. They were not, however, a scientific sampling. In countries with only a few police forces, such

as New Zealand and Australia, we could cover most. That would have been difficult to do in the countries with many police jurisdictions, such as Canada with either 179 or 480, depending on how one counts, and the United States with over 17,000. The Canadian discrepancy is explained in chapter 4. In these countries, we tried to sample experience in police departments that differed in regional location, size, and governance structure. We interviewed on the basis of a “convenience sample,” utilizing professional contacts, friendships, and referrals from one official to another. Once we were satisfied in the rough representativeness of our coverage, we interviewed in each country until we were hearing the same things again and again.

The interviews in New Zealand were undertaken in 2004–06, and included former police commissioners who had served in that position between 1978 and 2000. The interviews in the other five countries were undertaken between 2012 and 2014. They too included chiefs who had served during the preceding twenty years.¹

All interviews were undertaken with a pledge of confidentiality. Accordingly, we have neither listed the names of the people interviewed nor attributed information to named interviewees without permission. As one chief wryly remarked, “You mean I’ve got to talk to you and I don’t get any credit for it?”

Because our interviews do not come from comparable samples, we have not analyzed them statistically to determine differences in experience either between or within countries. We have used the interview information to illuminate what goes on in the give-and-take of police governance.

In the end, our conclusions reflect a synthesis of scholarship, observations, and interviews collected over our lifetimes of study. They are the result of “triangulation” among sources, hoping that the weaknesses of each will be compensated by

their collective range. Our analysis produces informed conjectures rather than tested findings. We submit them in the hope that they will encourage others to undertake further comparative studies of this important topic.

Regardless of methodology, there is an unavoidable obstacle to assessing the extent of either excessive political intrusion or failures of accountability. Detecting these twin defects in police governance depends upon one of the parties protesting what is occurring and making it visible. If the police accommodate overreaching direction by politicians or politicians accept police explanations for not informing, there is no visible foul. The protagonists themselves may not even be conscious of one. In other words, absent detailed bright lines in legislation, judicial precedent, or executive rule, the visibility of problems in the relationship between politicians and police depends entirely on the perceptions of the protagonists. Moreover, by failing to protest, the accommodating official becomes complicit. Either they recognized the problem and did not protest or they did and conceded for reasons of expediency. In both cases they would be reluctant to admit they had not lived up to their responsibility.

Since accommodation makes both parties complicit, it is hard to determine confidently whether governance is working in the public interest. This hampers any third-party investigation—legal processes, independent inquiries, investigative journalism, and interviews with participants. Conclusions about the quality of police governance have as much to do with what becomes visible as with the amount of substantive disagreement.

This also suggests that the testimony of participants to the quality of their relations depends to some extent upon political/managerial cultures. Since these evolve over time, it means that across both time and space the ways in which politicians and police chiefs behave may not change but assessments of what is acceptable may.

Another limitation of our study is that we did not try to balance our interviews with police with the perceptions of supervising politicians. We did not for several reasons. Surveying politicians would have required considerably more time and funding. Furthermore, in countries where there are only a few police jurisdictions, such as New Zealand, Australia, and Britain, interviewing politicians would create a “diplomatic” problem. We would inevitably hear stories where both players, knowing the other was being interviewed, would want us to “get it right.” This could inhibit frankness, increase self-justification, and undermine confidence in our pledge of confidentiality.

The fact is that we are not interested so much in the “right” of particular events as in the experience of conflict. We present the police perspective. Their narrative is admittedly only half the story. Like all of us, they want to appear in a favorable light. As a result, they characteristically represent themselves as victims or heroes. We have no examples of chiefs who said, in effect, “I really screwed up.” We hope that other scholars will provide the politicians’ narratives and compare them with what we report from police chiefs.

Relying largely on police testimony, as we have done, suggests a question that scholars who study politicians in police governance might address: Are police chiefs and politicians equally sensitive to the “balance” in the relationship? For chiefs, defending their prerogatives is a central issue. Perhaps because police are in the subordinate position, they may be more attentive to the governance relationship. Politicians, on the other hand, have a wider ambit of responsibility. They have other things to do than ensure that the police are responsive and accountable. Furthermore, their responsibility for policing is often quite brief, being a stage in a broader political career. They will often have little experience or expertise with respect to policing when appointed.

By contrast, for police chiefs, policing is their career. It may be, therefore, that police are more likely to feel the constraint of interference than politicians are to feel the lack of accountability. In short, when it comes to assessing the health of the police-governance relationship, police executives may be the canary in the coal mine, with the important difference that when the conditions deteriorate they do not keel over but squawk louder.

This is not to suggest that politicians and police executives are always struggling for dominance. Politicians are often delighted to delegate responsibility for public safety to the police, just as police executives often recognize that being accountable to representative public opinion is critically important to their image and their effectiveness. The relationship between politicians and chiefs is often collaborative, based on a comfortable agreement that both accountability and independence are needed and that they have achieved the proper balance.

To summarize, the purpose of this book is to compare the practice and culture of police governance in six contemporary English-speaking democracies. What are the institutions, understandings, and practices at the point of interaction between elected politicians and police commanders?

The book is organized into three parts: Part I presents the intellectual and institutional context of police governance; part II, the practice of police governance; and part III, a re-examination of contemporary police governance. In part I, chapter 2 provides examples of some of the most visible and serious disagreements about police governance from each country. Chapter 3 reviews the evolution of scholarship about police governance. Chapter 4 describes the current police-governance structures in each country and the governmental and social structures (“settings”) within which they operate.

Part II describes the police–political interaction in the six countries based largely, but not exclusively, on interviews with chiefs. Chapter 5 discusses the frequency with which disagreements occur, the issues that are involved, the process of disagreement, and the results. Chapter 6 presents advice from police chiefs about how to minimize and manage disagreements.

In part III, we discuss what we have learned about the management of police governance. Chapter 7 explains the reasons for serious disagreement between politicians and police chiefs. Chapter 8 describes the evolving context of police governance. Chapter 9 reviews mechanisms for managing the police–government relationship and presents our conclusions about improving the management of the democratic dilemma.

Note

1. The Australian Institute of Criminology also kindly gave us access to recordings of nine interviews with commissioners and former commissioners that it had commissioned in 1999 and 2000.



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Part I

Contexts



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