

李 温 / 著

# 英国警察法 历史发展与当代改革研究

Historical Development  
and Contemporary Reform of  
the Police Law of UK



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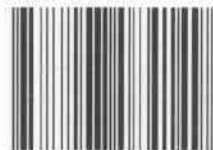
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本社常年法律顾问:北京市大成律师事务所哈尔滨分所律师赵学利、赵景波

## 内 容 提 要

本书选取在西方警察法中最具代表性的英国警察法作为研究对象,希望通过对其历史与现状的探讨,为中国的警察法治建设提供理论与实证的借鉴。全书共八章,分为上下两篇,上篇是关于英国警察法的历史研究,包括“以确认全民皆警为特色的旧式警察法”、“以创建职业警察为目标的近代警察法”和“以追求民主、法治、人权为特色的现代警察法”等三个部分;下篇是关于当代英国警察制度改革研究,包括改革的时代背景和理论基础,以及改革的具体内容,即警察管理体制的改革、警务工作主体的改革、警务工作模式的改革、警察监督机制的改革。

第一章“以确认全民皆警为特色的旧式警察法”,介绍 19 世纪以前英国警察法从习惯法到成文法的演变过程,总体而言,这一时期警察法的主要内容都是围绕着确认和发展以全民皆警为基本特色的民间义务警察制度而展开的。本章分为四节:第一节“旧式英国警察法的时代背景”,介绍英国旧式警察制度所赖以存在的政治、经济基础和社会组织结构;第二节“建立在习惯法基础上的旧式警察制度”,首先介绍盎格鲁-撒克逊王国时代的英国警察制度,这一时期的警察制度具有浓厚的日耳曼习惯法色彩,法律充分尊重受害人对罪犯决定是否予以惩罚的权利,并从社会最底层开始建立十户区、百户区等居民自治组织;1066 年诺曼征服以后,法律开始明确地强调王权,同时加强基层民众的治安责任,出现了由国王任命的验尸官、和平战士等义务法律工作者;第三节“成文法对旧式警察制度的确认和发展”,介绍英国早期最重要的两部警察立法,即 1285 年《温彻斯特法》和 1361 年《治安法官法》,前者通过建立治安官(Constables)制度,使警察工作真正纳入到国家法制的轨道中,获得了较为有力的法律保障;后者通过建立治安法官(Justices)制度,进一步加强了国王对地方治安官的管理权;第四节“旧式警察制度的衰落”,探讨旧式警察制度随着资本主义经济的产生,特别是随着工业革命的发展而逐渐显现出来的不适应之处。

第二章“以创建职业警察为目标的近代警察法”，介绍资产阶级革命和工业革命以后英国警察法的变革与发展，通过国会立法创建职业警察是这一时期警察法发展的基本特征。本章选取了近代英国最重要的三部警察立法，即1829年《都市警察法》、1856年《郡市警察法》和1919年《警察法》，从立法背景、基本内容和对后世的影响等三个方面分别予以阐述。第一节“近代英国警察法的时代背景”，介绍了近代警察制度产生的政治原因、经济原因和社会原因；第二节“1829年《都市警察法》”，这是英国历史上第一部直接以“警察法”命名的警察立法，是英国近代警察诞生的标志，被誉为“新型警察制度的奠基之作”。根据该法所组建的伦敦都市警察，代表了一种通过合法手段建立起来的高效、有力的新型国家机关，它既避免了军队的暴力镇压，又克服了旧式警察的软弱无能，不仅使工业革命中混乱的社会秩序得以恢复，保持了国家政权的稳定，而且使民众的生活进入到一种新的、更加有序、更加安全的状态；第三节“1856年《郡市警察法》”，这是英国警察史上另外一部具有里程碑性质，但是又较少为中国读者所了解的重要法律，该法将新型警察制度从伦敦推广到整个英国，并且通过规定警察地方自治原则，以及中央政府与地方政府之间的合作伙伴关系，成功地解决了警察管理中中央政府与地方政府之间的矛盾和冲突；第四节“1919年《警察法》”也是在英国警察史上具有特殊意义的一部法律，标志着英国警察从一般的职业化而向更高层次的专业化迈进。

第三章“以追求民主、法治、人权为特色的现代警察法”，介绍第一次世界大战后英国警察法继续发展和不断完善的历史变迁。本章选取了现代英国警察制度中最具代表性的两部法律，即1964年《警察法》和1984年《警察与刑事证据法》，它们分别从不同的角度对现代英国警察制度进行了改革与完善，被誉为“现代英国警察组织的宪章”和“现代英国警察权力的宪章”。第一节“现代英国警察法的时代背景”，主要分析了经济危机、工人罢工、工党崛起、英帝国解体等一系列历史事件对现代英国警察法的影响；第二节“1964年《警察法》”，该法是自新型警察诞生以来所有英国警察法中改革力度最大的一部，它通过自愿合并与强制合并等方式，对原来分散的地方警察进行重组，打破了传统上警察与地方政府一对一的格局，实行跨地区的警察工作模式。在此基础上，1964年《警察法》对传统警察制度进行了全面梳理、补充和完善，包括进一步确认三角形警察领导体制、规定各警察机关之间的支持与援助制度、规定警察职务侵权

行为的责任、规定公众投诉警察案件的处理程序、规定对袭警以及妨碍警察执行公务行为的特别处罚等。1964年《警察法》充分体现了英国人“旧瓶装新酒”的政治改革谋略,是一次兼顾传统与创新的成功尝试;第三节“1984年《警察与刑事证据法》”,该法是在20世纪70、80年代警察与公众关系出现危机的社会背景下出台的,目的在于规范警察权力,保障犯罪嫌疑人权利。该法的最大贡献是将原本分散的、零星的、不确定的警察权力规定变得相对集中、统一和确定,结束了以往普通法、国会立法以及地方附属性立法并用的混乱局面,为警察正确行使权力奠定了法制基础。此外,该法通过合理设定警察权力与犯罪嫌疑人权利,实现了二者之间的基本平衡,缓解了因为警察刑事侦查活动而引起的社会矛盾,在“权力与权利”这个永恒的法律话题中,该法堪称是妥协与平衡的典范。

第四章“当代英国警察制度改革之时代背景和理论基础”,分为两节。第一节“当代英国警察制度改革之时代背景”,介绍在《欧洲人权公约》推动下英国国内人权问题的发展变化,特别是1998年英国《人权法》的出台,使尊重人权和保护人权成为警察工作的一项基本原则,是否尊重人权和保障人权则成了衡量警察工作好与坏的重要尺度,为此,警察机关必须加强管理、提高人员素质和执法水平,这是当代英国警察制度改革的原因之一;第二节“当代英国警察制度改革之理论基础”,论述新公共管理理论及其对警察工作的影响。新公共管理理论是一种将市场调节机制与政府干预机制相结合的新型政府管理理论,其主导思想是重新定位政府职能,实现政府职能从管理向服务的转变;其基本价值取向是提高政府工作效率和效果,降低政府部门的运行成本;其具体改革举措是将私营企业的管理机制引入到政府行政之中。在新公共管理理论的推动下,英国政府对警察的职能、机构、工作方法和管理模式等各个环节进行重新设计,展开了一场全面、系统的警察制度改革。

第五章“关于警察管理体制的改革”,分为三节。第一节“英国的地方自治传统与警察的地方化”介绍了英国地方自治传统的历史由来及其现实意义,着重论述了地方自治传统对警察的影响;第二节“英国警察从地方自治向中央集权的演变和发展”,首先论述了英国警察从地方自治逐步向中央集中管理过渡的原因,传统警察管理中的分散与不统一,造成警察队伍涣散无力,无法适应有组织犯罪等新型犯罪的挑战,也不利于现代化高科技手段在警务工作中的推广和应用。为适应社会发展的需要,英

国政府进一步加强了对警察的集中化管理,通过减少地方警察机关的数量,加大首席警官的权力,建立并规范全国性警察社团组织等方式,增强中央政府对警察的影响力;第三节“2002年《警察改革法》对于警察管理体制的改革及其评价”,介绍了2002年《警察改革法》在警察管理体制方面的具体规定,总的来看,该法并未从根本上突破1964年《警察法》所奠定的警察地方自治基础上的三角形领导体制,而是在坚持地方自治的基础上,继续提升中央的领导能力。笔者认为,造成这种保守状态的原因,一方面是出于对传统的尊重,更重要的则是由于一个国家的基本政治取向,对于英国来说,地方民主是其整个社会赖以存在和发展的根基,如果以破坏地方民主为代价来实现效率,其后果无异于杀鸡取卵。因此,虽然英国当前关于警察管理体制的改革还远远算不上完善,但是,它是一种可以持续发展的改革,在对未来社会状况、经济和政治发展程度无法做出准确判断的情况下,缓慢地推进改革是一种比较明智的选择。

第六章“关于警务工作主体的改革”,分为三节。第一节“当代英国警务工作主体的多元化趋势及其成因”,介绍了当代英国警务多元化的现状。随着商业保安、市民警务等新生社会治安主体的成长壮大,多元化的警务工作格局逐步取代了自近代警察诞生以来由警察独自承担社会治安责任的局面,为此,有学者提出应当以“社会安全管理”的概念取代原有的“警务工作”概念。在社会安全管理体系中,国家不再是当然的、最重要的主体,因而也失去了其占据警务资源的天然优势。造成警务工作多元化的原因主要是由于犯罪数量的增长超出了公共警察的应对能力,如果单纯依靠增加警力来解决问题,政府将无法承受财政上的压力;第二节“多元化警务的具体表现形式及其存在的问题”,分别介绍了专门警务、市政警务、市民警务和商业警务等各种形式的警务工作主体,并分析了它们各自存在的问题;第三节“多元化警务主体的法律调整及未来发展预测”,首先介绍并分析了英国学术界为规范多元化警务工作而提出的四种管理模式,即合并与重组模式、掌舵者模式、网络模式和市场竞争模式。在上述四种模式中,政府的态度明显地倾向于由公共警察吸收私人警察的合并与重组模式以及由公共警察领导私人警察的掌舵者模式,2002年《警察改革法》对此已经做出明确规定。笔者认为,2002年《警察改革法》的规定虽然暂时解决了多元化警务管理中的政府缺位问题,但是其中却存在明显的不合理之处,它让公共警察负责审查鉴定其竞争对手的资格



和能力,使原本应当依靠服务质量和水平取胜的竞争关系受到扭曲,因此,虽然目前以公共警察为核心的重组模式和掌舵者模式得到了较多的支持和认可,但是,这并不意味着可以彻底排除公共警察与其他多元化主体之间的市场竞争模式和网络模式,从长远发展的角度看,后两者似乎更加符合民主与多元的现代社会理念。

第七章“关于警务工作模式的改革”,分为三节。第一节“警务工作模式及其历史演变”,介绍了无形警务模式、惩罚性警务模式、被动反应型警务模式以及主动前摄型警务模式等警务工作模式的历史形态,着重分析了主动前摄型警务工作模式在当代英国的发展,包括社区导向型警务改革、问题导向型警务改革和情报导向型警务改革;第二节“三种警务模式的分析与比较”,对主动前摄型警务工作模式中的社区警务、问题警务和情报警务进行了系统地分析与比较,指出三者之间的内在联系,概括而言,问题警务、社区警务以及情报警务是当代警务工作从被动反应型向主动前摄型转变过程中所形成的三套彼此独立,但又互相关联的关于警察工作的指导思想、方针策略和方法手段。它们在产生背景、基本原理、表现形式等方面存在重大差异,却又殊途同归,最终的目标都是为了减少犯罪,建立和维护良好的社会秩序;第三节“三种警务模式中存在的问题及其未来发展预测”,首先指出三种警务模式适用中的主要问题是被孤立和割裂开来,对于其未来发展,笔者的观点是,必须将三种警务模式联系起来,放在警务工作整体改革的大背景下统筹设计,它们彼此之间的关系不是新与旧之间的更替,而是长期共存、互相促进、协调发展的关系。

第八章“关于警察监督机制的改革”,分为三节。第一节“改革之前的警察监督机制”,介绍了1964年《警察法》对于警察监督机制的基本规定,以及1976年《警察法》和1984年《警察与刑事证据法》对1964年《警察法》的修正。传统警察监督机制的根本问题是警察自己查自己,与现代国家追求权力制约与平衡的法治精神相违背;第二节“改革的原因、过程和基本思路”,首先从国际人权保护的政治环境、国内种族危机、警察腐败以及多元化警务的发展等四个方面分析了促使警察监督机制改革的原因,然后,系统阐述了英国内政部关于投诉警察调查制度改革的基本思路,包括建立独立于警察之外的投诉警察案件专门调查机关,扩大投诉案件的受案范围,简化投诉程序等等;第三节“独立警察监督机制的法律规范及其评价和预测”,介绍了2002年《警察改革法》关于独立警察监督制

度的基本法律规定,并对其做出评价和预测。笔者认为,独立警察监督制度的建立是当代英国警察管理日趋成熟和完善的重要标志,它将会推进英国警察工作向更加民主化的方向迈进,同时还将为多元化警务的健康发展提供制度保障。

余论“比较与借鉴”,首先回顾了中国警察法的历史发展轨迹,对清末变法以前、清末变法修律、中华民国时期、中华人民共和国时期等四个历史阶段的警察法制状况进行了简要介绍,总体来看,传统中国社会的警察制度独树一帜,在组织、规模、管理等方面均超过同时代之英国,但是,近代以来,中国警察的发展开始落后于西方社会。清末变法虽然在形式上模仿西方建立起专门的警察机关,但是缺乏西方近代警察的精神实质,警察长期以“统治工具”的社会形象示人。另外,警察立法的质量较低,执法中问题迭出,在整体水平上与西方发达国家之间存在较大差距。研究英国警察法的历史发展和当代改革可以带给我们诸多启示和借鉴:首先,国家应当对警察立法予以充分重视。英国的经验表明,通过立法建立和发展警察制度最容易获得民众的认可与支持,是警察改革的最佳路径,但是,法制变革需要高超的政治技巧和高度的社会责任感,既要尊重历史,又要实现创新,必须将二者有机结合起来;其次,面对风云变幻的社会现实,警察必须主动改革,改革是警察保持自身生机与活力的必由之路。作为改革者,不仅要有锐意改革的勇气,还要能够充分预见到改革的难度,当代警察所面临的复杂社会形式决定了警察改革应当是一种全方位的综合性改革,仅仅局限于个别层面或细枝末节的修改将难以奏效;最后,在警察法治化进程中,警察法学研究具有不可忽视的重要价值,必须予以大力发展。而警察法的性质决定了警察法学研究需要特别务实,“放下学术地位之争,集中精力研究实际问题”是英国警察法学成功发展所带给我们的重要启示。

## ABSTRACT

Policing is the most basic and important executive power of modern countries. The quality of policing not only decides a nation's security, but ensures the construction of 'the rule of law' and the stability and harmony of its society. Based on this recognition, policing and related research are highly valued in modern western countries. And, since 90th of the twentieth century, the comparative research of policing has attracted more and more attention. For China, the present day is the key time to construct 'the rule of law', in which well organized policing plays a crucial part. For the purpose of offering some instructions and references to the reform of policing in China, this paper focuses on the police law of the UK, the most typical in the western world, introduces its historical background and analyses its contemporary reform.

The UK is the home of modern policing and has a durability that has gradually improved over the centuries. The development of police law in the UK has been relatively slow and incremental, and can be divided into three parts. First, there is the traditional police law characterized in affirming the traditional folk police; secondly, the latter-day police law characterized in building the professional police; and thirdly, the modern police law characterized in pursuing democracy and human rights.

The old police law had developed a long history before the nineteenth-century, with the main effect of affirming the traditional folk police. In the early days of Anglo-Saxon, the police system was characterized by the tradition of Anglo-Saxons, deferring the right of the victims to decide whether to punish the offenders. Meanwhile, in medieval times the tithing or groups of ten households were formed, in which community members were held responsible for each other's conduct. After the Norman Conquest in 1066 the king's power

was enhanced and the public's duty of keeping peace was also strengthened. In addition, the king nominated specific people to keep the peace and order, such as coroners and peace-keepers. During the 13th and 14th centuries the Statute of Winchester and the Justices of the Peace Act became law. The former affirmed constable responsible for the peace and policing was brought into the legal orbit, and was given legal powers. The latter confirmed the king's control to constables by justices of peace. By the eighteenth-century the traditional system of peace-keeping had lost its effectiveness in the developing economic environment with its transient population. The old system gradually declined.

The new police law came into being during the Industrial Revolution with the main objective to become a professional police service. Three Acts typically reflect the birth - the Metropolitan Police Act 1829, the County and Borough Police Act 1856 and the Police Act 1919. The Metropolitan Police Act 1829 was the first Police Act in the UK, and was the foundation of the modern police service which we know today. This act set-up the Metropolitan Police and introduced a new kind of policing, which was very different from the earlier brutal approach adopted by the military. The Metropolitan Police not only kept the public order during the Industrial Revolution, but introduced a new kind of stability, order and safety into people's lives. The County and Borough Police Act 1856 was a key piece of legislation that organized and expanded the modern police from London to the rest of the country. This Act also regulated the relationship between central government and local administration, and affirmed local autonomy. The Police Act 1919 was another important step in the process of police modernization, and indicated how the police had become more specialized and professional. This Act largely improved police salary and conditions of service, and raised the status of the police career, which eventually encouraged better recruits into the police service.

After the First World War(1914—1918), the UK entered a new modern world and its police law and police organization came of age and matured. The most significant police acts of this time were the Police Act 1964 and the Police and Criminal Evidence Act 1984, which reformed different aspects of the

modern police, and are regarded as 'the charter of modern police organization' and 'the charter of modern police power'. The Police Act 1964 reformed the police by making it compulsory for police forces to amalgamate, breaking the old system in which each police force corresponded with each local administration, replacing it by a kind of trans-regional police system. In addition, the Police Act 1964 complemented and consummated the modern police by introducing regulations such as the responsibility of tort by police work and the procedure of complaints against the police. Overall, the Police Act 1964 was a successful reform, and combined both the traditional and innovative forms of British policing. The Police and Criminal Evidence Act 1984 came into being against the background of the crisis in police and public relations in 70<sup>th</sup> to 80<sup>th</sup> of twentieth-century. The purpose of this Act was to regulate police power and to protect defendants' rights. By this Act, police powers were changed from being unclear and fragmented into a more transparent and unified set of regulations. The Act also reached a balance between police powers and the defendant's right, and reduced the opportunity for conflict. To this extent, the Police and Criminal Evidence Act should be regarded as a model for reform.

The historical development of police law in the UK has shown that legislation is a very important basis for a well organized police service and to reform the police by legislation is a key factor in the success of the modern police. But to do this effectively requires political wisdom and a feeling of responsibility for the good of society as a whole. Also, every country's development has its own unique continuity, so police legislation should pay attention to the combination of tradition and modernity. For the police in China, the priority is to build up the belief in the law and the rule of law. Only when the power of law is higher than that of government order, will it be possible to reform the police by legislation.

The period of transition from the twentieth-century to the twenty-first century is a time of social reform and the police are challenged unprecedentedly. Firstly, with the rising awareness of human rights, the improvement of human rights has become the top priority. With the introduction of the Human Rights

Act 1998, the police respect and protection of human rights has become a major standard to measure the effectiveness and legitimacy of police work. So the police have to enhance training, supervision and management, in order to improve their staff's knowledge of human rights and boost their performance. Secondly, the impact of new public management reform on the police organization emphasizes efficiency, effectiveness and quality of service, and introduces a series of private management ideas, such as privatization, division of powers, a competition mechanism, and a spirit of corporation. This is a significant contrast to the high cost, low effect bureaucratic system that existed in traditional police forces. Meanwhile, in the new century policing beyond the police has advanced rapidly and brought a considerable challenge to the modern police since its creation. Consequently, the reform of the police has been unavoidable and necessary.

The first change to the police in the new century is legislative. In 2002, the Parliament published the Police Reform Act which led to unprecedented change to the police service. The first part of the reform is about effective governance of the police. For example, according to the Police Act 2002, the Home Secretary is duty bound to produce an annual national plan and present it to Parliament. He also has the power to issue codes of practices to chief police officers, and can also issue directions to police authorities. As a result of the reform, the relation between local police and the Home Office is much closer, and police work has become more standardized and uniform. Police ability to reply to emergencies has also been enhanced, and the changes have also improved transparency and communication.

The second part of the reform is about the ownership of policing. By the rapid development of business policing, local administrative policing, and citizen policing, a system of pluralistic policing has emerged, which gradually replaced the police monopoly of keeping the public security. Under such a situation, the state is no longer the sole provider of public security, as it has now lost the dominance of being the only resource in policing. This has now introduced a form of competition as there are other players in the 'policing market'. The Police Reform Act 2002 now provides that the public police and

other agencies are responsible for the professional competence of modern policing. This statutory regulation settled the governance of policing beyond the police, and has created a space for other players to enter into the world of policing and security, and work alongside the public police.

The third part of the reform relates to the model of policing. Since community-led policing has been broadly applied during 60<sup>th</sup> to 70<sup>th</sup> of the last century, the police in the UK have continually expanded the use of problem-led policing and intelligence-led policing. The application of the three above models has progressed modern policing from passive reaction to initiative action or from reactive to proactive policing. The Police Reform Act 2002 has also regulated the increased use of civilian staff and community support officers, which has provided the lawful development of all police personnel within the three models of policing.

The fourth part of the 2002 reform relates to complaints against the police. The Police Reform Act 2002 broke away from the old system of 'the police investigate themselves' by establishing a national, special, and independent new system for handling complaints against the police, which is entitled 'The Independent Police Complaints Commission' (IPCC). The IPCC is an attempt to satisfy the public's desire to supervise the police democratically, and dispel the public's concern over the older system. The reform has built a bridge between the police and the public, and improved communication and trust. Evidence so far, indicates that police behavior and performance has been improved. This reform again indicates the Government's determination and ability to improve police management.

The reform practice in the UK has shown that policing should be adapted to reflect the development of society, particularly the economic and social changes. This is the only way for the police to keep itself efficient, effective and 'in touch' with its communities. However, police reform is difficult because of the complexity of the police organization and society itself. As a consequence, police reform should be done in an integrated way. It should also be emphasized that such reform will not be successful if it is limited to minor aspects of the police organization. Reform has to be much broader and deeper for

it to be a long-term success. Finally, both the historical development of the police and contemporary police reform are based on sound academic research and empirical data, which guarantees a high level of confidence in the reforms.

As a result of improved police law in the UK, the argument for increased involvement in academic research into policing can be made. As to the troubled area of police law research in China, the initial priority should be to concentrate on practical problems in policing and focus less on the academic perspective. Academic prestige in research will eventually emerge when a number of practical problems are solved. It will be at this point that police law will begin to be effectively promoted by academic research.



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