

*“To understand a science it is necessary to know its history.”*

Auguste Comte

## **János Sallai: The history and birth of the Hungarian Law Enforcement**

### **Abstract**

The dawn of the Hungarian police and the forces of law and order dated to the second half of the nineteenth century. The first Hungarian prominent practitioner of Police Science: Agoston Karvasy Hungarian jurist. This study presents the development of the Hungarian Police Science and concept of policing from the nineteenth century to the present when the **Hungarian Accreditation Committee by the decision of the 2012/8/III/2/2.** (2012th 09, 28) recognized the Police Science as scientific discipline. While reviewing the history of policing it is simple to observe and define how the law enforcement has changed significantly by the modernization both in Europe and in our country and made it to its present form.

I find interesting that researches and debates on enforcement laws conducted mainly by administrative law scholars and law professionals and only occasionally by practitioners coming up with noticeable writings.

### **Keywords**

Law enforcement , Security guard, Police Science danger , public risk , public administration , prevention , restoration, public order , public peacefulness, public safety

Over the past 10 years the efforts of professional and civil society law enforcement organizations in 2012 have crossed an important milestone since the decision of the **MAB 2012/8/III/2/2.** (2012. 09. 28.) the Police Science is recognized as a discipline, but also found it necessary to develop a decision of the content and form, which was later confirmed by the decision of nr. 2012/10/V/2. The resulting new science scholars, however, requires that the scientific and technical challenges to meet the requirements, the Law Enforcement and explore the past, present and seriously sought its potential in the future. They are all motivated to seek out and review the history of the Hungarian Police Science, which has its roots in the late nineteenth century War.

The revolutions in the eighteenth and nineteenth century, the French and also the First Industrial Revolution, both took place a physically and mentally decisive impact on people's lives. Large cities have become the most typical township in the industrial society. While the people's life expectancy has grown significantly. The railways have become highly important for strategies in national economy. In long term in addition to railways tracks the settlement system and

infrastructure have transformed too (access routes, pipelines, associated branch lines, bridges, subways, etc.)

As a result of the industrial revolution a great mass of the population moved to new residential areas in order to sustain everyday livelihood and to enjoy the opportunities offered by the industry which enabled them to live and work there in future. All of these changes were decisive in the formerly widespread public policies and public security conditions as well. These new challenges have been applied for new solutions and the answers were found firstly in the big cities of Western Europe. Paris<sup>1</sup> was among the first big cities<sup>2</sup> in Europe where State Police was introduced, which later served as a model to other European cities and states.

Due to the Habsburg oppression the modernization in Hungary went forward just after the Compromise and switched to higher speed later on. In the second half of the nineteenth century due to the geographical situation of the country the Hungarian Police Science practitioners and researchers relied mostly German literature therefore I mention the German sources primarily. Among many others Robert Mohl's work: *Die Polizeywissenschaft* (1832) was published in numerous edition and provided source for the Hungarian cultivators work on this topic. He explains the law in order and the institute of law in order and describes it constrictively and distinguish from the recent judicial institution. According to him: "**The police or police law is all the public institutions and rules that aim avoiding obstacles and problems in the society which would hold back the comprehensive development of human forces and where some of the power they promote are not safe or imperfectly able to sustain the development.**" In later times (1870) another German jurist engaged with science of law and order Lorenz von Stein says: "*Policing is in which the government intervenes the administration policies and also in which the police is part of the public administration.*" The Hungarian Police Science practitioners especially in the beginning were based on the works of Lorenz von Stein, and mostly relied on it. In Germany lived and worked Otto Mayer too whose outstanding work of dogmatic law (e.g. *Das Staatsrecht des Königreiches Württemberg* c. works 1829) present the effect of spreading not only in Germany but also in Austria and Switzerland. As a result, the German administrative law system is based on his dogmatic system. Otto Mayer reached this effect as from the substantive law he worked out the general concepts and legal institutions system. By his interpretation the constitutional state is a well ordered state by administrative law.

According to this the constitutional state consists of the followings:

1. The separation of leading powers
2. Dominance of law and rules
3. well-ordered administrative law

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1 In 1667 Louis XIV. of France defined law enforcement as the task of the officer not the task of the city.

2 Until the born of prussian Allgemeines Landrecht 1794 the law stated: **the task of police is maintaining of order and security and preventing of danger.**

To express the fact that during this period the evolving Hungarian state police needs well prepared staff with scientific knowledge Nandor Pilchner underlined in 1876 in his following article: *“In my opinion the directors of police officials should be more scientific on each aspects than the judges are. Since while the judge takes the law and facts underlying the judgment with the help of other council members nonetheless the policeman in countless cases has to act with the absence of any material and expected to work alone. “*

. Comparing to the pioneer of english, french and german law enforcement scientists we, hungarians do not have to ashamed as our first law enforcement scientists has already taught "state forcement" and "police law"<sup>3</sup> at the University of Jesuits in Kolozsvár. The first, significant law scientist of hungarian science of law enforcement in the 19th century was Ágoston Karvay. In his his work, in the „Science of Law Enforcement”<sup>4</sup> he explicates these main subjects:

- *main principles of law enforcement,*<sup>5</sup>
- *education of political culture, scientist organisations, religious literacy common courage existence of the state*<sup>6</sup>,
- *common courage existence of persons,*<sup>7</sup>
- *property courage*<sup>8</sup>

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3 Bíró Vencel: A KOLOZSVÁRI JEZSUITA EGYETEM SZERVEZETE ÉS ÉPÍTKEZÉSEI A XVIII. SZÁZADBAN. Kolozsvár 1945. p.8.

4 Karvasy Ágost: A közrendészeti tudomány Pest 1862. p. 153

5 The principles of law enforcement according to Karvasy:

- The police has to interfere only in those cases when the citizens’ ativity is not successful.
- The police activities equals with the **chastity**.
- Equipments used by the police must not be opposed with the **citizens’ rights**.
- Police **activities** have to be rightful and **subservient** too.
- Those equipments must be chosen which are the best guarantee for reaching the goal.
- Police power must not be **controlled by the arbitrary police officers**.

6 *„It means: common courage existence of the state, common order and silence, prestige of state power and authorities at the maintenance of rights and warrant of state organization.”*

7 **Common courage existence could be bothered:**

- loud music
- rebellion
- revolution

8 *„Preventing danger, which can threat the courage”*

Today the meaning of common courage or property courage could raise a smile us, but in my view they almost equal with the security of common and personal property. Beside the above mentioned phrases Karvasy sized the definition of science of law enforcement: „*The science of law enforcement is from those principles which prevent **danger** and **ensure** the need of people. Danger, bothering stem from the evil will of people or natural elements which are independent from the human will.*”<sup>9</sup>

In my view it is the first hungarian law enforcement definition which is effectual nowadays too. From these I would like to underline the prevention and windup of state danger. In his work the following statements could be read: „*The police has to make more activities in order to maintaine the order and courage which are the followings:percipient, preventiv, discourage and discovery activities.*”

Later, in 1865, Jog és államtudományok encyclopaedia by Tivadar Pauler was published. In his works among other things he put on the pulic policing for a matter of discussion. Refering to German authors and works of Karvasy Ágoston he says about the concept of policing he followings:“*The final goals of the state establishment: to prevent several possible violations and eliminate threats to keep social order and it is necessary to eliminate all of its harmful consequences. To reach these goals directly the established institutes for this purpose belong to the broad range of Law enformecement. The law enforcement politics or policy study by virtue of the principles are in a systematical content of avoiding the direct threats to the liberty of public and in which it can cause civil order breakdown further on avoiding and to eliminate all of its harmful consequences.*”<sup>10</sup>

Pauler speaks no longer in general of the **elimination of hazards**, but specifically the **prevention of violations**, and the prevention of threats to the social order.

According to Pauler the main task of the civilian police is to maintain public order. From the subjects mentioned it clearly seems that this should exist most of all in the public (government) and private security protection.

At this time, the spreading and adoption of policing was marked by published encyclopaedias in the era when the authors have considered it necessary in the encyclopaedia the inclusion of articles of executor of policing which was the police. For example, the Universal Encyclopaedia of Hungary<sup>11</sup> in 1873, wrote the following about the law enforcement: “*The police, the sum of the measures in the state in wich the public order and public safety are in order to protection and defence and the implementation of those by the state government under the control of media. By the distinction between public safety and welfare police the welfare police has lost most of its importance after the as a bulk had been assigned to the other branches of the administration as non-police actions.*”

About the same thing the Hungarian cyclopaedia in 1884<sup>12</sup> recorded the following:

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9 Uo. p.1

10 Tivadar Pauler: Jog és államtudományok encyclopaediája. Pest Emich Gusztáv tulajdona 1865. p.231

11 Egyetemes Magyar Encyclopaedia, XI, published: Szent István Társulat. Buda-Pest, 1873.

12 Magyar Lexikon XIV. kötet (Az egyetemes ismeretek encyklopaediája) Budapest, 1884.

*"The police (Latin Politia, greek: Politeia curves) an official institution in a state wich cares and is responsible for the public safety the well-being of society and the free developement of the state which, however, is separated from the institutes of justice.*

*The police endowed with extraordinary powers to provide emergency assistance.*

*In addition it can also command and decrees and order penalty, police is to maintain public security and anyone who breaches the rules then penalties may apply and also the police enabled to do everything possible to discover sin committed in secret. "*

During this period, the evolving law enforcement, was organized in parallel with the capital city police and state police law to the unborn police law. By all this Kedvessy George was led to the collection of rules regulations and give the concept of police and its duties.<sup>13</sup> On his opinion - *"The definition of Police means all the relative authorities and law offices, which is responsible for **promoting the well-being, sustain public order** and security, and not mention to prevent the threats to these, even if this comes from human action or omission or from the elements of nature - to **implement the established** national and local regulations as well as to maintain them, further on to investigate the perpetrators of crimes and misdemeanors and apprehend and send them to the Tribunal."* <sup>14</sup>Although the statement with mention "relative authorities" became a little romantic and further on the expression of "to promote the welfare state" bears the marks of the former Prussian police state in its time, I still believe it has recorded clear wording before the existence of 1881 Police Act and wich perhaps have given instruction to the period. Especially because at this time in the largest city of Hungary in Pest city the Police chief executive was Thaisz Elek who sometimes had taken advantage of the deregulation and exceeded his duty and its power.

The emergence of modern policing also had an effect on Hungary's evolving civil police. Thus the 1881 XXI. Law article (Budapest, the capital's police) Section 2, fixed the Metropolitan (state) police duties in wich that is clear that the creation of it was based on the then-police concept.

Therefore by the law 2. §- the Metropolitan Police was responsible for:

in its operation field protect the safety of person and property, sustain peace and public order, to possibly prevent the violation of criminal laws, rules regulations and decrees, and prevent any natures of dangers and damages

which may occur by accident or omission. Moreover to restore peace if the order disturbed to report the guilty people act against the law and rules and for fathom and chastisement passing them on to the competent judge or authority. In general to fulfill the surveillance, prevention and discovery duties of police but within the present law framework.

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13 According to Kedvessy there are two types of police:

-administration police ( preventing the danger and controlling the observing of order)

-judicial police

14 György Kedvessy: Országos és Pest városi rendőrügyi szabályrendeletek. Pest 1872. 1. §

The relationship and connection between the police and the administration was the subject of debate from the beginning. This is confirmed in his formulation by Béla Grünwald administrative, legal professional.

Bela Grunwald in 1884, wrote the following: *"The third major function of the government despite some others is the police. The police represent the action of the State, which is used for external security of existence which is one of the main conditions of human development, and give these to the citizens of the state. Thus, a subject of public law enforcement to discover any hazardous factors and is responsible for the protection against these effects of factors...can not have its own system but adapts the existing Interior government system and has the same system as the Interior government. The activities of policing are (negative) maintaining and protective."*<sup>15</sup>

Similarly to Grunwald, Kalman Csíky also defined law enforcement as part of the administration. According to Csiky's statement in 1889 on the police administration - as an administrative activity- ensuring the living conditions of the individual lies in the center of gravity therefore security and safeguard will be protected to the person so threatened by the nature just as like by the people of indomitable strength.

The power of state for this purpose activities, measures and its institutions constitute the whole of policing and the relevant administrative laws form the right of policing. "

It shows the diversity of the era that many people in the topic of Policing especially workers in the public sector took up the pen to express their views.

And so coloured the line Paul Smith, who is professor of Kecskemét Academy of Law and portrayed the notion of law enforcement in 1887 as follows. *"So I mean with the policing as administrative activities such as removal of outside threats to living development of state residents"*- furthermore he added: The law enforcement includes the defining and managing legislation of the activities of the executive power and all the state institutions.

Subsequently, divided the Law Enforcement into three main sectors:

1. **State Police**, or rather state security police (prevent or eliminate state security threats)
2. **Public Policing**, or rather Social security police (law and order in society, stillness and silence maintained)
3. **Public Safety**, or rather personal and property safety of law enforcement

The law enforcement practitioners did not or only tangentially address the secret police. A significant person among them is Gyula Fekete, who wrote a publication in the Law Bulletin issue of 19 October 1877 under the title of:

*"The nature and organization of the secret police"*. The author defined the secret police as one of the unique timbre of "ordinary policy directing" of which has the following two basic forms.

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15 Grünwald Béla: A közigazgatás és a személyi élet. Budapest 1884. p 222.

-Civilian secret law enforcement (which is responsible for control of the robbers, thieves, criminals. The author simply called this civilian policing).

-Political policing (deals with the crimes against state security, misdemeanours, control of the secret popular movements)

Like all new, so the police were looking for its place. In the second half of the nineteenth century eminent exponents have discussed the law and administration several times.

Amongst many the police versus administration debate appeared again also in the Hungarian Administration magazine, 1896 May 3th issue where in his writing Kiss Mihály<sup>16</sup> explained that the administration developed from the policing and the discussion of the theory of policing led to the recognition of the basement of administrative law principles and theory. In accordance to him policing and public administration both act as departments of the state, however, the conceptual scope of administration is bigger than the one of policing. He says the administration has law enforcement but the law enforcement itself is not administration, even if it has administration. However the administration is prior to law enforcement and policing. The author defines the policing as the following: *"the police therefore is an acting state organization which seeks to provide -in positive and negative direction by the right to put on pressure- the success of the state organizational operation in the interest of public development against the threats from human actions and omission."*

Falcsik Mihály reflected to Kiss Mihály's writing as the following:

*"policing is a branch of public administration which prior to administration prevent you obstacles that threaten the achievement of the objectives of the State."*<sup>17</sup>

Although both authors refer to the same sources, regarding to the police conflicting conclusions have been reached.

To close the debate Michael Kiss noted that on his opinion the school of life has taught that the administration must be separate from policing.

The discussion on the pages of the Hungarian Public Administration has ended, but in professional communities as a subterranean stream, still continuously present.

Within the circles of law enforcement professionals the concept of Law Enforcement Police created by exponents and the practicing law enforcement representative institutions most importantly the police have similarities among its tasks which is clearly discernible.

So it is no surprise that we can read in the Police Encyclopedia, published in 1909: *"Policing is meant by the State Administration of Internal Affairs, the activities of the coercive power of law and order and the maintenance of public safety. Thus police is a task of the state. The other administrative twigs are independent and self-sufficient. The scope of police duties according to the known trichotomy includes **prevention**, and **detection**. Besides these substantive police laws this group must include the discretionary rights which as well must never cross these limits."*

The regulations of the era summarized in the Police Lexicon are also displayed. The novelty of it is being the first record of the discretionary rights of the police that still lives and valid nowadays. At the same time, more precisely, the Hungarian legal encyclopedia published in 1907, clearly defines the law enforcement as administrative functions. While acknowledging that the Security

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16 Közrendészet, A rendészet és közigazgatás . Magyar Közigazgatás. 1896. május 3. 18. sz.

17 Uo. május 17. 20.sz.

Unit has an independent function as well such as: *"prevent the commission of criminal offenses is mostly to maintain personal and property safety after all. "*

To create a precised definition of nowadays known and in use public and security policies there have been serious attempts made in the first decade of the XX. century. I would highlight the one which was published in Révay encyclopedia :

**Public order:** the order of state and society together, that is open to people living with and within the boundaries of the law and of nature.

**Public safety:** the social order, which changes in realization of personal, social and public functions aspiring individual and joint operation against disorder and peril and is insured as much as possible and prevention from any person who the dangers caused by and act against them.

At the beginning of the XX. century in the theme of Police and policing excel **Concha Győző** one of the greatest representative of Hungarian public law science and a conservative-minded cultivator of the political and constitutional theory whose ideas and opinion on police and law enforcement adored and recognized by the up to date professional media. Concha in his work *Policy* (1905)<sup>18</sup> stated that: *"the public policy is the cooperation of people for in purpose of a common goal which bounded by the law and nature but that the operation between the legal and natural boundaries, not only the state authorities but also free for individuals."* In addition, he defined the order of the state and the society, in which he identifies that to establish and promote the conditions for it is the responsibility of the police. According to him, **the police could secure the public order with calling for guards, preventing attacks and restore order to the troubled, avoiding the physicy destructive attacks, and the restoration of law and order.** These ideas still apply nowadays.

Kmetty Károly in his book (1905) refers to the diversity of policing and its connection to the administration when he writes that (the administrative police) *"Police has as many aspects as many sections the administrations has."*

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18 Concha Győző: Politika. Budapest 1905. p. 308

In addition, on his opinion the law enforcement can be distinguished on the basis of hazards, which may be:

- security (which is used to prevent the risk comes with the illegal human free will)
- administrative (preventing object, interest, life-threatening hazards)
- political (ethnic, police press)
- Public Order (removing risk with comes with some intention against law).<sup>19</sup>

Henrik Dorning was familiar with the domestic and Western European policing and police who personally was privileged to study the work of the Paris, Vienna, Berlin police and compared them with the Hungarian circumstances. He observed that the German, English, and French use the same word to the police as an organization and as a law enforcement function.

In Hungary we can meet the word police at the first time at the beginning of the nineteenth century just after the language reform (which meant organization and function as well see for eg. The Field Police Act.) Then in the mid-nineteenth century, the content delineation becomes clear of policing and police. In 1922 Henrik Dorning in his presentation and the written statement of it he writes accurately about the relations between the police and law enforcement, as: "*the police is the public authority body, which is to defend the existing legal system against the imminent threat even in coercive means*"

Now it is apparent that the police not only an armed body and guards, but is an office too.

Further on he even writes about that on his opinion the police are not covered for everything just because of its license, which is called Security Unit, because he thinks each administration has its policing.

Móric Tomcsányi lawyer, professor, member of the Hungarian Academy of Sciences in his inaugural (1929) paid special attention to the topic of policing. Therefore he examined separately the policy, public policy in legal context and the purpose of the police function. He found that to make a borderline between police functions and administrative functions is often very difficult. He agreed with Concha Győző that the essential feature of police is the discretion so called the right for discretion. On Tomcsanyi's opinion: "*Police actions is a matter of administration and police administration, only one species of the administration.* The weird irony of history that a book about the concept of policing have been produced in the most dangerous times when police without legal barriers has become an essential tool of "social control."<sup>20</sup> According to the author József Tóth "*The police is as a mirror in which the image of the current state reflects in its legal structure*"

The outstanding expert science and servant of the Hungarian government and administration Magyary Zoltán in his magnum opus in the Hungarian Public Administration, (textbook published in 1942) wrote about policing:

**"In our term policing is to help to protect against disruption of public order by someone."**

*Policing is a branch of the administration, which jurisdictions extend into all the other branches of government and administration therefore it belongs to the general administration (§ 72), but the purpose of it is firmly described: to provide the general*

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<sup>19</sup> Kmetty Károly: A magyar közigazgatási jog kézikönyve. Budapest. 1905. pp 294-295.

<sup>20</sup> Tóth József: Rendészetfogalom a nemzeti szocialista államban. Eger 1938. p. 167.

*tranquility, security and safety system. The police are not positive, but protective, preventive activities. This is the reason why it differs from the professional public administration, where duties are positive.*"<sup>21</sup>

Magyary Zoltán has classified the duties of the police into the following main groups:

- The maintenance of public order, and its restoration when necessary
- The maintenance of public safety
- Political or State policing
- Administration Policing
- Judicial Police
- The police of criminal justice

The overlaps clearly visible in the policing concepts formulated at the end of the nineteenth century and at the beginning of the twentieth century, and we also see that the executor of law enforcement duties are mostly (but not exclusively) the police.

After the Second World War due to known historical circumstances a complete overhaul of the Hungarian police and administration took place.

Since in Hungary after the II. World War. the political left wing came to power policing was attributed to the product of capitalism-born, civilian law development in previous era therefore, in the period of socialism, the armed forces were organized by the Soviet pattern.

In the last years of the II. World War policing have been militarized, which after the war in the socialist years has strengthened.

The fact that in the period of socialism the duties of the secret police had been referred to the police task system the bad memories during the Habsburg period have repeated and thus the police again became unpopular amongst the citizens, and the majority of citizens have shown negative attitudes toward the police. As a result, law enforcement scientists and scientists of administration only paid attention later on to re-wording and clarify the concept of policing.

According to the Administration textbook published in 1980: *"In the socialist state policing belongs to public administration sector, which intended to safeguard public order and public security and furthermore that the disciplines have not policing duties of law enforcement apparatus, but the sectoral bodies are entrusted with."*

After the fall of the iron curtain Szamel Lajos went back to the roots and found that: **"policing can be defined as a state activity aim in preventing the disruption of public order, prevent and restore order directly after troubled disruptive behaviour."**<sup>22</sup>

Beside Lajos Szamel also Berényi Sándor has created a permanent police concept in his textbook The State Administrative Law where he mentions:

The law enforcement is an administrative activity as such, constitutes an official activity, designed for public safety, in order to preserve public order governed by law, to maintain the contribution in restoring the violated law.

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21 Magyary Zoltán: MAGYAR KÖZIGAZGATÁS. Budapest. 1942. p. 280

22 Szamel Lajos: A rendészet és a rendőrség jogi szabályozásának elméleti alapjai Rendészeti tanulmányok 1992./1. p. 7.

The law enforcement is the oldest administration activity."

The statement of Baraczka Róbertné-Szikinger István reinforces when administrative nature of policing as: *"Policing is defined as an administrative activity, which is responsible for protecting the public safety and public order and personal security of citizens, as well as assistance in restoring the violated order"*

Based on the presentation of the above concepts can be stated that **the police in the modern state is an administrative action** which is intended to defend the society from **arising danger from illegal human behaviour**. In agreement of Géza Finiszter's book the 'Rights of the Police' and to confirm it: *"This function of the management of law enforcement can be implemented through three functions:*

-prevention of hazards arising from the unlawful human behaviour (presence, **guide function**);

-legitimate physical attacks in the reflection of the unlawful violence (**armed forces function**);

-the required preparatory process for government needs to enforce criminal law and the detection and investigation (**law enforcement function**). "

After the review of the history we can see clearly that policing and law enforcement has changed significantly both in Europe and in our country during the modernization and made it to its present form. I find that interesting that research debates on the policing have been completed mainly administrative law scholars and professionals

and only occasionally has come across the topic of policing to the practicing and cultivating police members with some awareness-raising writings.

However, I consider this important that these discussions have been presented from the beginning because it had encouraged the development of policing and law enforcement and contributed to create its identity. Thus, by the end of the XX. century in a number of countries in Europe Police Science formulated its need for independence, and the need for being separate from other disciplines which fulfillment somewhere has already been implemented (see Hungary) and somewhere it is still pending. Finally, I think Laszlo Petrovich's words from 1884 are still current. *"A good policeman is not born, but can be formed by education and training."*

Therefore, we can have no other task than continue to research our profession and the history of our science, and pass on our accumulated knowledge and experience to those who now between the university walls are trying to get to know the mysteries of Police Science.