THE ORIGINS AND IMPLICATIONS OF PRIVATE POLICING IN AMERICA

from the nineteenth century through the present

A look at the complex origins of private policing in America, its development and implementation since the nineteenth century, and a critical analysis of the social and political consequences in America through time.

Lisa Demarais  
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In the nineteenth century, the inadequacies of public policing led businesses and citizens to turn to private forms of policing. As private policing grew in popularity and power, it became intertwined with labor discipline. Private agencies like the Pinkerton Detective Agency used espionage and violence to break strikes and undermine labor unions. The government made efforts to restrict the powers of these agencies in the early twentieth century as the actions of private policing became more publicly known and public opinion plummeted. Despite these efforts, private policing has become ubiquitous since the 1980s. Having abandoned union busting in the 1930s, private policing has begun to fill roles traditionally occupied by public forces. However, private policing was and remains vastly unregulated. Private police are often exempted from adhering to the same criminal procedures as public forces. Holding public and private police forces to different procedural standards while they serve largely the same function violates the civil liberties of Americans and allows these forces to assume the state’s power to maintain order and protect its people, subverting the state’s sovereignty and monopoly over the use of such force.

In the areas where public policing was available, it often became corrupt or did not fully meet the needs of businesses or individuals. In the nineteenth century, public policing became heavily entwined with local politics. In larger cities, this intimacy with political leaders gave way to corruption such as political patronage and election interference. Local police officers would support local politicians publically or even campaign for them. When the politicians were elected or their position secured, they would make appointments based on this campaign support. The patronage system created

inefficiencies because police appointments were not based on merit or performance standards but on political affiliations and support. Additionally, this system made it very difficult for incumbent politicians to be challenged. Police chiefs often had very little control over decisions regarding their departments. Policemen and police chiefs were also expected to allow politicians to make decisions, appointments, and essentially lead police departments.²

The emergence of private policing led to a major constriction of public policing expansion. Because the public police force did not adequately meet the needs of businesses or private citizens, both employers and citizens turned to private policing in the nineteenth century. Private policing expanded and “siphoned some of the best talent available to the new [public] departments and provided citizens with an alternative means of recovering property.”³ Railroads stretched across the nation and often through unpoliced country or through multiple jurisdictions. Without a federal police force that extended through these areas, businesses often relied on private police and guards.⁴ They were exceedingly concerned with protecting private property and had lost confidence in public police. It had also become difficult for city police forces to meet the needs of employers as public policing had inadequate means to discipline large numbers.⁵ This led to rapid expansion of private police forces rather than public ones. Americans had become more willing to rely upon informal modes of policing to maintain law and order, which weakened the authority of public police forces and decreased their necessity.

⁴ Ibid, 363.
From the mid-nineteenth century until World War I, labor disputes resulted in violence more frequently than ever before in United States history. This increase in labor violence called for an increase in labor discipline in the form of private police, hired guards, and private detectives supplied by various detective agencies. Most notable of these policing agencies was the Pinkerton Detective Agency. Private policing emerged as a professional, organized, and lucrative business. Unlike public police forces, private agencies served their employers and not the general public. This meant that the Pinkerton men sought whatever ends their employer desired and did not serve to bring order and uphold the law. Wherever the Pinkerton men traveled and met strikers, violence ensued.

The Pinkerton Detective Agency was founded in 1850. Allan Pinkerton entered into police work in 1847. When he caught counterfeiters hiding in the woods near his home, local merchants asked him to keep a look out for more counterfeiters. He was appointed the first detective in Chicago that same year after rescuing two kidnapped girls. Eight years later, he formed the Pinkerton Protective Police Patrol. The patrol provided night protection for Chicago businesses. The patrol was responsible for fifty three arrests in its first year. The agency switched from policing to providing guards in times of labor disputes in the late 1860s. Allan Pinkerton viewed union activity as criminal and against American values. Over the next three decades, industrial violence increased immensely and the Pinkerton men became more involved in labor disputes to profit off of frightened businessmen.

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6 Smith, From Blackjacks to Briefcases, 1.
7 Ibid, 3.
8 Ibid, 6-7.
9 Ibid, 6.
As the Pinkerton agency expanded and became responsible for more violence, the public opinion of the agency plummeted. Most citizens saw the guards and police as a necessary evil as the agency had become the de facto national policing body. The Pinkerton men were viewed as a marauding, drunk army that threatened citizens, and they were often arrested by public police. In 1866, the Pinkerton men were involved in a labor dispute in Braidwood, Illinois. The mayor refused to allow the men to “parade in the streets” and stated that he feared the miners “a good deal less than the Chicago watchmen.”¹⁰ The city that had once appointed Allan Pinkerton its first sheriff was one of the first cities to take action against his agency. Illinois lawmakers were reluctant to respond to the action, but despite the unwillingness to outlaw private guards, Pinkerton men were regularly arrested for their acts.¹¹

The Pinkerton Detective Agency became increasingly unpopular as it became more involved in large scale violence instead of smaller acts. One of the most notable large scale acts of labor discipline involving the Pinkerton Agency occurred in the town of Homestead, Pennsylvania. The Homestead Strike began as an industrial lockout during wage negotiations between the Amalgamated Association of Iron and Steel Workers and Homestead Steel Works, owned by Andrew Carnegie. Henry Clay Frick, head of operations at the Carnegie Steel Company, negotiated for lower wages. He stated that the decrease was due to the prices of steel, blooms, slabs, etc. falling as well as the prices of new machines, which increased output. He also claimed that the company had lost money during the previous year.¹² During negotiations, Frick locked the workers out of the mine

¹⁰ Smith, From Blackjacks to Briefcases, 8
¹¹ Ibid, 7-8
with a barbed wire fence, and he called upon the Pinkerton Detective Agency for 300 watchmen to stand guard outside of the deserted work area.\textsuperscript{13} Frick went to the Pinkerton Agency before going to local authorities and before negotiations had been completed. When asked why he did not go to the county sheriff for aid he stated he did not have confidence in the efficiency of the sheriff and deputies. Frick had good reason for his lack of faith, as three years earlier a small strike in Homestead had driven the police back to Pittsburgh.\textsuperscript{14} When the Pinkerton men arrived at Homestead by water, hundreds of strikers had gathered at the water’s edge. The workers believed the men were scabs, or replacement workers. Shooting soon broke out, and the river was set ablaze. This meeting of guards and strikers led to a twelve hour siege which left three guards and ten strikers dead.\textsuperscript{15}

After the violence at Homestead, public sentiment toward the Pinkerton men had become low enough for some politicians to attempt to restrict the actions of private police. Thomas Watson, a Populist representative from Georgia, introduced a proposal in 1892 to outlaw hired guards completely. William Jennings Bryan, a Populist representative from Illinois, agreed; he proclaimed that “governments are organized to protect life and property. These functions should not be transferred to private individuals and hired detectives until we are ready to acknowledge this government as a failure.”\textsuperscript{16} The federal government then established a subcommittee to investigate. The Congressional sub-committee interviewed Pinkerton guards, local law enforcement,

\textsuperscript{13} Ibid, 356.
\textsuperscript{14} Oates et al, “The Homestead Strike,” 356.
\textsuperscript{15} Smith, \textit{From Blackjacks to Briefcases}, 14.
\textsuperscript{16} Ibid, 14.
Henry Frick, striking workers, townspeople, and Robert and William Pinkerton.\textsuperscript{17} By the end of the 1890s, lawmakers in various states including Georgia, Missouri, Montana, and Wyoming established anti-Pinkerton laws even though Congress had declared it legal for businesses and individuals to hire private guards to protect their private property.\textsuperscript{18} The investigation led Congress to enact what was colloquially known as the Anti-Pinkerton Act, which prohibited the federal government from hiring any Pinkerton employees or employees from similar agencies. Additionally, the information discovered during the investigation showed the extent of private policing to the public.\textsuperscript{19}

Another violent clash of strikers and hired guards resulted in the Ludlow Massacre. Mine workers at the Colorado mine in Ludlow went on strike in September 1913. In April 1914, the citizens of the Ludlow Tent Colony were attacked by the Colorado Fuel and Iron Company’s hired guards as well at the Colorado National Guard.\textsuperscript{20} Despite the military’s involvement at Ludlow, the presence of Pinkerton guards still caused violence. The militiamen and guards were looking for a man in the tent colony. They met with one of the designated leaders in the colony, George Tikas. When he returned from the meeting, Tikas claimed there were guns set to wipe out the entire colony. After Tikas returned, two bombs exploded and open shooting began. The colony’s men tried to draw fire away from the women and children, but were unsuccessful.\textsuperscript{21} The official military report admitted that the army became a mob. It also admitted that the militia set fire to the tents with gasoline and matches, and that soldiers

\textsuperscript{17} Smith, From Blackjacks to Briefcases, 17.
\textsuperscript{18} Ibid, 20.
looted the colony. The Military Investigations Committee did not deny that the battle was premeditated and planned.\(^{22}\)

Although accounts of the events of the massacre differ, some aspects are corroborated in various versions. Pearl Jolly, one of the survivors of the massacre recalled for the Commission of Industrial Relations that the militiamen and Pinkerton men kept their guns trained on the women and children left in the camp throughout the day.\(^{23}\) Walter Fink, of the United Mine Workers Association, published a pamphlet that was spread nationwide. It described the events of the Ludlow Massacre, became widely accepted as fact, and was influential to public opinion regarding the event. Fink described the Pinkerton guards and the militiamen as blood thirsty assassins hired to exterminate the strikers.\(^{24}\) While records vary, Fink claimed in the pamphlet that sixty-six people were killed and forty-eight were wounded. Of those dead he stated that eighteen were strikers, ten were guards, two were militiamen, two were women, and twelve were children. Fink’s pamphlet also painted a shocking scene of “tents riddled with bullets until they looked like […] fishing nets.”\(^{25}\) While the validity of Fink’s pamphlet is not discernable, it became circulated nationwide as fact and heavily influenced public opinion of citizens and politicians, which facilitated the decision of many private policing firms to abandon anti-union work.

In the early twentieth century, public concerns about private policing still focused on its use by employers to break strikes and to spy on labor unions. In the 1930s, a


\(^{24}\) Ibid, 15.

\(^{25}\) Ibid, 7.
Democratic Congress determined to uphold collective bargaining as a labor right, launched a more thorough investigation into anti-union activity than the investigation of the late eighteenth century. In 1935, Congress enacted the Wagner Act, which was supposed to halt employer interference with employee labor unions. However, the business community generally refused to comply with the act and continued to work against unions.\(^{26}\) This led Congress to form the Committee on Education and Labor, colloquially known as the La Follette committee, which began an investigation into worker’s rights violations. The committee found that the espionage business was “the chief obstacle to the realization” of collective bargaining.\(^{27}\) The investigation led the Pinkerton Detective Agency to focus more on detaining outlaws rather than strikebreaking and union busting in order to save the agency’s public image. The agency officially ended labor interference in 1937 when the board of directors agreed and publicly stated that “this agency in the future [will] not furnish information to anyone concerning the lawful attempts of labor unions […] to bargain collectively.”\(^{28}\) Due to this shift in focus, private policing became less of a public concern mid-century despite substantial growth in private funding and workforce size.

Since the mid-twentieth century, private policing has taken on multiple roles and the amount of privately employed guards, patrolmen, and investigators has swelled. During the 1980s, the ranks of private investigators grew by nearly fifty percent. In the late nineties, private guards began to outnumber public law enforcement personnel, three-

\(^{26}\) Smith, *Blackjacks to Briefcases*, 92-95.
Private security guards have become more often hired for the varied tasks public police previously performed. These guards also often dress like policemen and assert the same air of authority. Since WWII, private police have conducted neighborhood patrols, guard businesses, investigate crimes, arrest citizens, search homes and people, and perform other duties which have blurred the line between public and private police. Even the federal, state, and local governments contracted security work to private agencies in the seventies and eighties. Much of this work included park security, patrolling housing projects, and guarding government buildings.

The lack of legal distinction between public and private law enforcement is problematic. The Supreme Court of the United States has largely avoided addressing private policing in regards to the Constitution. Local and state level courts have been left to decide on a case by case basis if or how to distinguish between public and private investigators in relation to legal criminal procedure. Private police often have the same or similar powers as public police without the same standards of conduct. No Supreme Court opinion has declared whether the Fourth, Fifth, Sixth, and Fourteenth Amendments from the Bill of Rights apply to private forms of police despite their status as non-government entities. These amendments uphold civil liberties in regard to the accused. Officially, the Bill of Rights only applies to state actors, a person or group that acts on behalf of the government. Private actors in regards to policing have not been required to uphold constitutional rights from the Fourth, Fifth, Sixth, and Fourteenth Amendment or read Miranda Rights to arrestees. However, some state and local courts have treated

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30 Ibid, 1244.
31 Ibid, 1177.
32 Ibid, 1229.
private investigators and guards as state actors due to their indirect or often direct relationship with public policemen. 34

The employer of private guards or investigators may be a person, group, or business, but as with the Pinkerton men, modern forms of private policing exists for the ultimate benefit of employers. This dynamic often leads to profiling, discrimination, and entrapment but without the accountability or regulations of public police. Not only have private police been excluded from the previously mentioned amendments but they are not restricted from entrapment, profiling, or discrimination on the basis that they are solely private actors. 35 US vs. Lima is prime example of condoned entrapment. Lynn Johnson, a plain clothed security guard in a department store followed Adelaide Lima, a shopper, into a fitting room. By peering through the crack in the door, Johnson claimed to have seen Lima remove tags from a blouse and put it in her purse. When Lima left the store, Johnson followed her, identified herself, restrained the other woman, and then took her to the store’s security office. The District of Columbia Court ruled the Fourth Amendment inapplicable and deemed Johnson’s actions as “performing security duties” since Johnson was only a licensed security officer and not a commissioned or deputized officer. In the same case, the court stated that “the private sector may do for its own benefit what the state may also do for the public benefit” but that this does not “implicate the state in private activity.” 36

Although, private police forces are not defined as state actors under U.S. law, public-private police partnerships are often utilized. These partnerships frequently

34 Ibid, 1229.
include joint investigations and information sharing.\textsuperscript{37} The Supreme Court has stated that “the most basic function of any government is to provide for the security of the individual and of his property. And unless Government safeguards its own capacity to function and to preserve the security of its people, society itself could become so disordered that all rights and liberties would be endangered.”\textsuperscript{38} The American government no longer holds a monopoly on the legal use or force nor solely provides security for the nation. If the nation cannot reserve these functions, then the legal restrictions of these functions should still apply to all private bodies which provide these functions. Otherwise, private policing violates the civil liberties granted by the government.

In the nineteenth century, businesses and individuals utilized private policing when public forces did not adequately provide security or legal action against the accused. Since that time, private policing has been involved in various acts of violence against citizens and has become increasingly entwined with the functions of public policing. Private police forces now act as agents of the state and share the nation’s responsibility to protect its citizens and allocate force. The Bill of Rights serves to limit only the government’s use of legal force, meaning that private policing is often exempt from these restrictions. The government should regulate all legal usages of violence and security to hold private police forces to the same constitutional limitations as public forces and safeguard civil liberties.

\textsuperscript{37} Elizabeth E. Joh, \textit{The Forgotten Threat: Private Policing and the State}, 13.