

Vision for Commonwealth's own police service belonged to Australia's first public servant

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Despite the long held and popular belief that the first federal policing organisation in Australia was established from a knee-jerk political reaction by William Morris Hughes in 1917, the idea for its formation actually belonged to another.

While history accurately records that Hughes established the first Commonwealth Police Force after an egg was thrown at him in Warwick, Queensland, the concept was evident in legislation more than a decade-and-a-half earlier.

What Hughes did was bring to life, albeit under politically dramatic circumstances, someone else's vision, the egg-throwing incident serving merely as a catalyst for an eventuality.

The only dilemma Hughes really faced in establishing a force was whether the nation was sufficiently mature to understand the rationale, apart from Hughes' own political agenda, behind the need for such an organisation.

Historical writings show that although the timing for the force's establishment was incorrect and Hughes' use of the force for political purposes contemptible, the need for the Commonwealth's own investigatory body was arguably sound.

As La Nauz reveals, responsibility for drafting legislation and providing the fledgling federal government with legal advice fell upon Australia's first federal public servant, Sir Robert Garran.¹

Sir John Latham, in writing an obituary for Garran detailing the work of this brilliant legal mind, stated that statutes "enacted at this time provided the framework within which the Commonwealth could come fully to life. Garran bore the burden of preparing this legislation".² In a tribute to Garran, Hughes was to state that "the best way to govern Australia was to have Sir Robert Garran at his elbow with a fountain pen and a blank sheet of paper".³ Garran was a man of vision utilising the law not only as a form of social control but also as a tool to establish and maintain the constitutional framework of an independent federated nation.

Garran, who also had been part of the team which drafted the Constitution was acutely aware that this foundation Act provided a trilogy of separateness between the legislative, the executive and the judiciary.⁴ The Constitution specifically provides for the formulation of legislation, the determining of it through the judicial machinery and, where appropriate, that provision be made for the handling of those convicted for breaching Commonwealth laws and/or committing offences against the Commonwealth.⁵ Hence, it could be

assumed that a natural progression would be that provision should be made also for the machinery to enforce the laws of the Commonwealth.

However, the drafters maintained adherence to the traditional Westminster model by opaquely granting this authority to the executive, thus no specific mention was made for the provision of a federal policing body.⁶ Moreover, the authority ‘to execute and maintain the laws of the Commonwealth’ was considered a responsibility of the military with Section 51(vi) of the Constitution granting exclusive authority for the development of statutory provisions to enable the military to perform this duty.⁷

Executive authority to establish federal civilian policing was therefore a prerogative of the government, thus removing the need to create such a body by traditional legislative processes. Action to establish this force, in the form of an administrative fiat, could only be initiated through the existing parliamentary provisions and, as with any public organisation, would rely on public funding for its creation and continuation.

Ongoing tensions over the creation of the Commonwealth arguably influenced Garran and others involved in the drafting of the Constitution, that in

order for the Commonwealth to survive as an entity in its own right it needed to be able to function in co-existence with, but independently of, the states.⁸ An area where the Commonwealth was now able to operate independently was that of defence of the country where exclusivity to raise military forces was within the sole preserve of the federal government.⁹ To place the provision of Section 68 of the Constitution into effect a Defence Act needed to be enacted.¹⁰

In 1903 the Defence Act was proclaimed establishing the Commonwealth’s military forces under the control of the Governor-General. Of interest is the inclusion within particular provisions of this Act of specific reference to members of “the police force of the Commonwealth”.¹¹ As Garran was responsible for the drafting of all legislation at this time, and no conflicting evidence exists to disprove his contribution to this fundamental Act, there is no doubt that it was Garran who incorporated the phrase ‘member of the police force of the Commonwealth’ into the Defence Act, 1903 (Cth). But this was the extent of reference to such a body at this time. The phrase did not appear in any other legislation enacted before this date and direct reference to military police and police of

the states in other parts of the Act removes any doubt that Garran’s vision of the future for the Commonwealth included the establishment of its own policing body. Why provision was not made in the actual Constitution is not clear. Garran and others engaged in drafting the Constitution appeared content to maintain the Westminster tradition of incorporating and maintaining executive authority within the reserve powers provisions of the Constitution. One advantage of such an approach was that the power available via this process was not limited as were the provisions to which Section 51 of the Constitution applies. The ability to co-jointly use provisions of Section 51 with the reserve powers provided in Section 61 gives the Commonwealth greater flexibility in areas such as law enforcement.

The idea of creating a federal policing body did not, however, go totally unnoticed even though no such body had been established at this time. In 1911 work was being undertaken by the Attorney-General’s Department on drafting a Commonwealth Crimes Bill. This bill was

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modelled on the *Criminal Code of 1899* (Qld).¹² This reliance on Queensland to assist with drafting the legislation is ironical as within a few years, tensions between the Federal and Queensland Governments over conscription would influence the timing for the eventual establishment of the first Commonwealth Police Force.

Thus, the establishment of the first Commonwealth Police by Hughes in 1917 after the egg throwing incident brought Garran’s vision to reality. The demise of the force in 1920 must be seen in perspective as it was not the end of its role, rather an alteration of its public identity. The establishment of the Commonwealth Investigation Branch within the Attorney-General’s department, of which Garran was permanent secretary, allowed for the continuation of a federal force that would go on investigating offences against the Commonwealth.

But Garran’s involvement with the eventual development of federal policing did not end here. It needs to be noted that it was Garran who proposed to his long time friend Attorney-General Hughes on July 19, 1927, that policing of the Federal Capital Territory should come under the control of the Commonwealth.¹³ From this,

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Garran’s vision was extended to incorporate the new Commonwealth Police.

Members of this new force came under the control of the Director of the Commonwealth Investigation Branch, Major Harold Jones. He used Commonwealth Police members to assist members of the investigation branch to investigate matters relating to Commonwealth responsibilities outside the jurisdiction of the Federal Capital Territory. Authority to work at a national level was derived from their status as peace officers, an office into which members of both the Commonwealth Police and Commonwealth Investigation Branch were sworn. Jones, as the Superintendent Peace Officer, had control over all three areas of responsibility.

The amalgamation of the Commonwealth and ACT police forces in 1979 to form the Australian Federal Police, and the incorporation later of the Australian Customs Service Narcotics Bureau, returned to one principal Commonwealth policing organisation responsibilities which previously were divided between organisations which were all intrinsically linked.



Photo courtesy AFP Museum.

A young Major Harold Jones in military uniform.

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Footnotes:

- 1La Nauz, J.A. *Alfred Deakin: A Biography*. Melbourne University Press: London. 1965 Volumes 1 pp.264-5;
 2Latham, Sir John. ‘Sir Robert Garran - An Appreciation’ in *Australian Law Journal* Vol. 30. 22 February, 1957. p.495; 3Nairn, B. Serle, G. (Eds.) *Australian Dictionary of Biography*. Melbourne University Press: Melbourne. 1983. Vol. 8, p.623; 4See: Garran, R.R. *The Coming Commonwealth* Angus & Robertson: Sydney. 1897; Quick, J. & Garran, R.R. *The Annotated Constitution of the Australian Commonwealth*. Legal Books: Sydney. 1901; 5Chapters I, III and Section 120 of *The Constitution* refer respectively; 6Section 61, in conjunction with Section 51 (xxxix), of *The Constitution* provides, inter alia, the Government with the authority to establish a Federal policing body for the purpose of enforcing Federal legislation and to protect the legislative, executive and judicial organs of the Commonwealth; 7Section 51 (vi) of *The Constitution* refers; 8Garran, R.R. *The Coming Commonwealth: An Australian Handbook of Federal Government*. Angus & Robertson. Sydney. 1897; 9Section 114 of *The Constitution* refers; 10Section 68 invests in the Governor-General ‘command in chief of the naval and military forces of the Commonwealth’; 11See, for example: Sections 114 & 122 of the *Defence Act, 1903*; 12C.P.D. 21 October, 1914 p.264; 13Memorandum from Sir Robert Garran to Hughes dated July 19, 1927. Item No. 107 AFP Museum refers.