



# History of the JP



A **Justice of the Peace (JP)** is a "*puisne judicial officer*" (pronounced "*puny*" meaning lower rank) appointed by means of a commission to keep the peace. Depending on the jurisdiction, they might dispense summary justice or merely deal with local administrative applications in common law jurisdictions. Justices of the Peace are appointed or elected from the citizens of the jurisdiction in which they serve, and are usually not required to have a formal legal education in order to qualify for the office, but in some jurisdictions are required to have varying forms of training specifically for JPs.

## History

The modern Justice of the Peace belongs to a centuries-old system of voluntary legal officers. The description of a person as a "Justice" comes from the fact that in earlier times, people who provided justice for the population in general came to have the term attached to their own name and role. The term "justice" ("Justiciar") had originally been used to describe the travelling judges, who moved from place to place throughout England, trying persons who had been accused of serious offences.

According to Her Majesty's Court Services of Great Britain the part played by magistrates and justices in the judicial system of England and Wales can be traced to the year 1195. In that year, Richard I ("the Lionheart" 1189-1199) of England commissioned certain knights to "*preserve the peace*" in unruly areas. To accomplish this King Richard appointed Hubert Walter (1160 - 1205).



Walter was an influential royal adviser in the late twelfth and early thirteenth centuries in the positions of Chief Justiciar of England, Archbishop of Canterbury, and Lord Chancellor. Walter accompanied Richard on the Third Crusade, and was one of the principals involved in raising Richard's ransom after the king was captured in Germany on his return from the Holy Land. Walter set up the system that was the precursor for the modern justices of the peace, based on selecting four knights in each hundred to administer justice.

In the reign of Henry the Third (1216-1272) there were citizens with the title of "*custodes pacis*", that is "*keepers of the Peace*", who had administrative and semi-military functions in maintaining the peace throughout the land. In those ancient times the King was all-powerful and law enforcers were concerned that the population kept the "King's peace". If one offended against the peace, then one was offending against the King and could be severely punished for so doing. In the main, the function of the early peace officers was a police, or enforcement role, but as time went by, their civil duties increased at the expense of the paramilitary or police duties.



There were travelling judges to deal with offenders, but in 1327 King Edward III ("Plantagenet" 1327-1377), by way of legislation, introduced the 'peace officer', to deal with minor offences and thus allow the judges the time to deal with the more serious offences. The act of 1327 referred to "*good and lawful men*" to be appointed in every county in the land to "*guard the peace*"; such individuals were first referred to as conservators of the Peace, or wardens of the Peace.

By the year 1361, Henry the Third's old title of "custodes pacis" had come to be called "Justices of the Peace" instead, thus combining the two notions of "Justice" and "peace officer". In 1361,

Edward the Third passed a law requiring them to meet at least four times a year to make sure that the more important offences were actually brought to trial. Out of this requirement of meeting four times a year came the term "Quarter Sessions" Edward also passed an Act which provided, amongst other things, "*That in every county of England shall be assigned for the keeping of the Peace, one lord and with him three or four of the most worthy of the county, with some learned in the law, and they shall have the power to restrain the offenders, rioters, and all other barators, and to pursue, arrest, take and chastise them according to their trespass or offence*".

Justices of the Peace still use the power conferred or re-conferred on them in 1361 to bind over unruly persons "*to be of good behaviour*." The bind over is not a punishment, but a preventive measure, intended to ensure that people thought likely to offend will not do so. The justices' alternative title of "magistrate" dates from the sixteenth century, although the word had been in use centuries earlier to describe some legal officials of Roman times.

The first direct legislation for labour by statute arose in an attempt to control the decay and ruin, both in rural and urban districts, which followed the Hundred Years' War, and the pestilence known as the Black Death. This first Statute of Labourers was designed for the benefit of the community, not for the protection of labour or prevention of oppression, and the policy of enforcing customary wages and compelling the able-bodied labourer, whether free or bond, not living in merchandise or exercising any craft, to work for hire at recognised rates of pay, must be reviewed in the circumstances and ideals of the time.



Powers were given by the acts of 1368 and 1388 to justices to determine matters under these statutes and to fix wages. Records show that workmen of various descriptions were pressed by writs addressed to sheriffs to work for their king at wages regardless of their will as to terms and place of work. By an act of 1388 no servant or labourer, man or woman, however, could depart out of the hundred to serve elsewhere unless bearing a letters patent under the king's seal stating the cause of going and time of return. Such provisions would appear to have widely failed in their purpose, for an act of 1414 declares that the servants and labourers fled from county to county, and justices were empowered to send writs to the sheriffs for fugitive labourers as for felons, and to examine labourers, servants and their masters, as well as artificers, and to punish them on confession.

The Justices of the Peace are often described as the mainstay of English government, yet the Justice was never primarily the king's servant. He was the local 'boss', whose power was measured by the extent of his land and tenantry. The Justices were hardly 'chosen' by the king, for they chose themselves. They were the only possible wielders of the functions which were progressively given to them, by statutes which should be regarded as defining rather than bestowing authority in their locality: that authority was unlimited, indivisible, and based until very recent times on physical force. When we talk of the Royal Justices in the 13th century, we must remember that the disputes of the peasantry, the by-laws necessary for fruitful agriculture, the substance of everyday life, were still matters for the landlord and were transacted in his manorial court. The 'local-government' functions of the JP's were part of the immemorial continuity of social life and the Justices were the landlords in another guise. As the J.P.'s increased in numbers and powers, the itinerant judges of England disappeared.



The Tudor monarchs (1485 until 1603) established the first real system of English local government and to do this, they made use of the already established system of Justices of the Peace. They placed most of the responsibility for administering the English parishes upon the local Justices, who were made responsible for the upkeep of highways, the imposition of local rates, the licensing of ale houses and the administration of the Poor Law.

The Poor Law Act of 1601 provided relief to be granted to paupers only in their parish of legal settlement. The Act stated that a person was legally settled in a parish after they had lived there for one month.

This was a great burden on some parishes and so the Settlement Act of 1662 provided that a newcomer to a parish could only acquire legal right to settlement if that person was:

- someone who held a public office or paid the parish rate
- renting a property with over £10 per annum
- unmarried and had worked in the parish for one year
- a woman marrying a male parishioner
- a legitimate child, aged under seven, whose father lived in the parish
- a child who was illegitimate and born in the parish
- a person apprenticed to a master in the parish, or
- a person resident in the parish for 40 days having given the parish authorities prior written notice of his intention to do so.



The rules were strictly enforced and people were forcibly ejected from a parish if they were not legally settled there and they became a liability to the parish. Determining the parish of settlement for a person without a settlement certificate was very complicated.

The person would be questioned by two Justices of the Peace (JPs) about his or her history: where they were born, whether they have been an apprentice, whether they were married and where they had lived and for how long.

At the end of the examination, the JPs had to decide whether the person should remain in the parish or be removed to another. If the latter, a removal order was issued.

In general, parishes were not so concerned about young, single men entering their parish as they were capable of earning a living and unlikely to need financial support from the parish. They were far quicker to investigate lone women, particularly those with children, and also single women, as they were more likely to be a burden on the parish funds.



In 1732, the qualifications of persons for the role of J.P. were considerably altered. Attorneys, solicitors and anyone not possessing an estate worth One Hundred Pounds per year were disqualified from holding office as a Justice. The functions of the English Justice of the Peace in the early half of the eighteenth century. "A single justice could fine a drunkard on the spot, give a gambler a month's hard labour and order a parish to relieve a pauper. At petty-sessions within each division, were appointed the surveyors of highways and that 'most arbitrary sovereign on earth', the overseer of the poor, and the rate for maintaining the highways was fixed. Divisional Sessions granted alehouse

*licences. At quarter-sessions, the justices administered the laws for the upkeep of bridges, gaols and houses of correction, and fixed county rates for these purposes. They heard petitions of disabled soldiers for pensions, issued writs to the sheriff for the distraint of accused persons and proclaimed new regulations. They fixed wages and prices. Most important of all, they tried Indictments for individual offences. "*

Being an unpaid office, undertaken more for the sake of renown and to confirm the justice's standing within the community, the justice was typically a member of the gentry. The Justices of the Peace conducted arraignments in all criminal cases, and tried misdemeanours and infractions of local ordinances and bylaws.

Towns and boroughs with enough burdensome judicial business that could not find volunteers for the unpaid role of Justice of the Peace had to petition the Crown for authority to hire a paid stipendiary magistrate.

Over the centuries, justices acquired many administrative duties, such as the administration of the Poor Laws, highways and bridges, and weights and measures. For example, before 1714, justices could be approached at any time and in any place by people legally recognised as paupers, appealing to them for aid if parish authorities had refused to provide any. It was relatively common for these justices to write out, on the spot, an Order requiring aid to be granted. The 19th century saw elected local authorities taking over many of these duties.

Towards the end of the 18th century, the absence of an adequate police force and the quality of local justices became matters of concern. Justices received no salary from the government, although they could charge fees for their services. They were appointed from prominent citizens of property, but a shortage of landed gentlemen willing to act in London led to problems. In Middlesex, for example, the commission was increasingly dominated by merchants, tradesmen and a small number of corrupt magistrates, known as "Trading Justices" because they exploited their office for financial purposes. A Police Bill in 1785 failed to bring adequate supervision of justices. However, the Middlesex Justices Act of 1792 set up seven public offices, in addition to Bow Street, London, with three justices in each, with salaries of £400 a year. The power to take fees was removed from all justices in the city. Six constables were appointed to each office, with powers of arrest. This was the origin of the modern stipendiary magistrate (district judge)

The first paid magistrate outside London was appointed in 1813 in Manchester. The 1835 Municipal Corporations Act gave boroughs the ability to request the appointment of a stipendiary magistrate in their locality. Originally stipendiaries were not required to have any qualifications, however they could only be appointed from the ranks of barristers (from 1839) and solicitors (from 1849). Women in England and Wales were not allowed to become justices until 1919, the first woman being Ada Summers, the Mayor of Stalybridge, who was a JP by virtue of her office. Today, the number of male and female magistrates is approximately equal.

In the centuries from the Tudor period until the onset of the Industrial Revolution, the JPs constituted a major element of the English (later British) government system, which had been termed sometimes squirearchy (i.e., dominance of the land-owning gentry). For example, historian Tim Blanning notes that while in Britain the royal prerogative was decisively curbed by the Bill of Rights 1689, in practice the central government in London had a greater ability to get its policies implemented in the rural outlying regions than could contemporary absolute monarchies such as France - a paradox due especially to JPs belonging to the same social class as the Members of Parliament and thus having a direct interest in getting laws actually enforced and implemented on the ground.

Until the introduction of elected county councils through the Municipal Corporations Act 1835, JPs administered the county at a local level. They fixed wages, regulated food supplies, built and controlled roads and bridges, and undertook to provide and supervise locally those services mandated by the Crown and Parliament for the welfare of the county. The Municipal Corporations Act 1835 stripped the power to appoint normal JPs from those municipal corporations that had it. This was replaced by the present system, where the Lord Chancellor (or as in the case in Australia the State Attorney-General) nominates candidates with local advice, for appointment by the Crown.

In special circumstances, a Justice of the Peace can be the highest governmental representative, so in fact 'gubernatorial', in a colonial entity. This was the case in the Tati Concessions Land, a gold-mining concession (territory) in the Matabele kingdom, until its annexation by the British Bechuanaland protectorate.



## Origins of policing



**BIRTH OF THE  
BRITISH BOBBY –**  
Robert Peel, Sherlock Holmes  
& The Bow Street Runners  
New Strange But True Series  
**By Don Hale**

The Justice of the Peace and the Police have a long history of working together.

The origin of the British police lies in early tribal history and is based on customs for securing order through the medium of appointed representatives. In effect, the people were the police. The Saxons brought this system to England and improved and developed the organisation.

This entailed the division of the people into groups of ten, called "tythings", with a tything-man as representative of each; and into larger groups, each of ten tythings, under a "hundred-man" who was responsible to the Shire-reeve, or Sheriff, of the County.

Throughout the period 1674 to 1829 many victims of crime were able to identify and apprehend the culprits before contacting a constable or a justice of the peace to secure their arrest.

Those who witnessed a felony were legally obliged to apprehend those responsible for the crime, and to notify a constable or justice of the peace if they heard that a crime had taken place. Moreover, if summoned by a constable to join the "hue and cry", inhabitants were required to join in the pursuit of any suspected felon. He worked in co-operation with the local Justice of the Peace in securing observance of laws and maintaining order. In addition, in the towns, responsibility for the maintenance of order was conferred on the guilds and, later, on other specified groups of citizens, and these supplied bodies of paid men, known as "The Watch", for guarding the gates and patrolling the streets at night.

In the eighteenth century came the beginnings of immense social and economic changes and the consequent movement of the population to the towns. The parish constable and "Watch" systems failed completely and the impotence of the law-enforcement machinery was a serious menace. Conditions became intolerable and led to the formation of the "New Police".

Bow Street Runners are considered the first regular British police force. Before the force was founded, the law enforcing system was very much in the hands of private citizens and single individuals with very little intervention from the state. Due to high rates of corruption and mistaken or malicious arrests, Judge Henry Fielding (1750–1754) decided to regulate and legalise their activity, therefore creating the Bow Street Runners.

Similar to the unofficial 'thief-takers' (men who would solve petty crime for a fee), they represented a formalisation and regularisation of existing policing methods. What made them different was their formal attachment to the Bow Street magistrates' office, and payment by the magistrate with funds from central government. They worked out of Fielding's office and court at No. 4 Bow Street, and did not patrol but served writs and arrested offenders on the authority of the magistrates, travelling nationwide to apprehend criminals.

Efforts to rationalise and further extend London's system of policing culminated with the passage in 1829 of Robert Peel's Metropolitan Police Act. This set up a centralised police force of 3,000 men under the control of the Home Secretary, with responsibility for policing the entire metropolitan area, except the City of London. Uniformed and carrying only wooden batons, the new "Bobbies" (referring to Robert Peel's Christian name, and the most polite of the many nicknames the officers received) patrolled the streets on prescribed beats.

## Australia

The role of the Justice of the Peace spread to the colonies as the British Empire expanded. The first appointed Justice of the Peace in Australia occurred at the very beginning of the colony of New South Wales. Governor Phillip in 1788 was appointed to the Justices of the Peace position, and was empowered to appoint other judges and justices by commission.



A Justice of the Peace in Australia is typically someone of good stature in the community who is authorised to witness and sign statutory declarations and affidavits and to certify copies of original documents. Criteria for appointment vary widely, depending on the state. For example, in Queensland, all JPs must complete an exam prior to being eligible for appointment, whereas in Victoria, a person need only prove good character by way of references.

Generally speaking, a Justice of the Peace cannot act in relation to a document which is to be used in a foreign country. One exception to this, however, is that countries in the Commonwealth frequently accept documents so certified, but this is largely dependent on local legislation.

Documents which are to be used in a foreign country that does not provide for a foreign JP to witness them should be dealt with by a notary public. This is the same for all countries where the office of Justice of the Peace exists.

A notary, in almost all common law jurisdictions including Australia, is a legal practitioner trained in the drafting and execution of legal documents. The functions of notaries specifically include the preparation of certain types of documents (including international contracts, deeds, wills, and powers of attorney) and certification of their due execution, administering of oaths, witnessing affidavits and statutory declarations, certification of copy documents, noting and protesting of bills of exchange, and the preparation of ships' protests.

Notaries in Australia were first appointed to office by colonial State Governors and once eastern Australian States began to grow, appointments were made by the Archbishop of Canterbury until the passing of various State Notary Acts regulating appointment by Supreme Courts, excepting Queensland which still adheres to the Archbishop of Canterbury.

## Queensland

Queensland achieved Statehood in 1859. To that point in time it was policed as part of New South Wales. There were 31 Justices of the Peace appointed in the Colony between 1857 and 1859, today there are 70,000+ JPs in Queensland. The first official Queensland JP was Mr. William Hunter, who was appointed on 24th January, 1859. There are a number of references to the role of the JP, for example in the Justices Act, and Queensland's Criminal Code, both of which passed into law in the nineteenth century.

The first female JP in Queensland was Matilda Hennessey sworn into office in 1918. As the years passed, so did the responsibilities of the JP. In recent years, with the onset of more complex and intricate legislation, the Justice of the Peace role has been taken over partly by the appointment of professionally qualified magistrates. This has not diminished the importance of the Justice of the Peace in today's society. In fact, recent legislation is imposing more responsibility upon the Justice of the Peace to ensure that the objectives of legislation are carried out properly. Enduring Powers of Attorney are one example of this responsibility.

In 21st century Australia, Justices of the Peace are appointed from all walks of life, but have always been highly respected members of the community. Australia has in many ways mirrored the English experiences, whereby the judicial functions have been overtaken by the appointment of magistrates, who have more formal legal training and extensive experience of the legal system.

The legal system more than ever is reliant upon the administrative role that Justices of the Peace now perform, whilst the judicial roles undertaken help to keep a check on powers of various law enforcement officers, such as the police or customs. For example it is the responsibility of the Justice of the Peace to exercise judicial discretion when determining whether to issue a summons or warrant.

In Queensland each year, JPs handle around 3,500 matters a day, alleviating the need for more formal legal intervention.

## Themis the Goddess of Justice



Did you ever wonder who the lady was standing in front of our courthouses with a sword and scales?

She is Themis the Goddess of Justice. The statue left is in front of the Supreme Court building in Brisbane.

The personification of justice balancing the scales of truth and fairness dates back to the Goddess Maat, and later Isis, of ancient Egypt. The Hellenic deities Themis and Dike were later goddesses of justice. Themis was the embodiment of divine order, law, and custom in her aspect as the personification of the divine rightness of law.

Themis is an ancient Greek Titaness. She is described as "of good counsel", and is the embodiment of divine order, law, and custom. Themis means "divine law" rather than human ordinance, literally "that which is put in place". To the ancient Greeks, she was originally the organizer of the "communal affairs of humans, particularly assemblies", Moses Finley remarked of Themis, as the word was used by Homer in the 8th century, to evoke the social order of the 10th- and 9th-century Greek Dark Ages.

However, a more direct connection is to Themis' daughter Dike, who was portrayed carrying scales.

In ancient Greek culture, Dikē (English translation: "justice") was the spirit of moral order and fair judgement based on immemorial custom, in the sense of socially enforced norms and conventional rules. According to Hesiod, she was fathered by Zeus upon his second consort, Themis

"If some god had been holding level the balance of Dike" is a surviving fragment of Bacchylides's poetry. Ancient Rome adopted the image of a female goddess of justice, which it called Justitia. Since Roman times, Justitia has frequently been depicted carrying scales and a sword, and wearing a blindfold. Her modern iconography frequently adorns courthouses and courtrooms, and conflates the attributes of several goddesses who embodied Right Rule for Greeks and Romans, blending Roman blindfolded Fortuna (fate) with Hellenistic Greek Tyche (luck), and sword-carrying Nemesis (vengeance).

Justitia is most often depicted with a set of scales typically suspended from her left hand, upon which she measures the strengths of a case's support and opposition. She is also often seen carrying a double-edged sword in her right hand, symbolizing the power of Reason and Justice, which may be wielded either for or against any party.

Since the 15th century, Lady Justice has often been depicted wearing a blindfold. The blindfold represents objectivity, in that justice is or should be meted out objectively, without fear or favour, regardless of identity, money, power, or weakness; blind justice and impartiality.

The earliest Roman coins depicted Justitia with the sword in one hand and the scale in the other, but with her eyes uncovered. Justitia was only commonly represented as "blind" since about the end of the 15th century. The first known representation of blind Justice is Hans Gieng's 1543 statue on the Gerechtigkeitsbrunnen (Fountain of Justice) in Berne.

Instead of using the Janus approach, many sculptures simply leave out the blindfold altogether. For example, atop the Old Bailey courthouse in London (see right).

A statue of Lady Justice stands without a blindfold; the courthouse brochures explain that this is because Lady Justice was originally not blindfolded, and because her "maidenly form" is supposed to guarantee her impartiality which renders the blindfold redundant.



## Current legislation

The *Justices of the Peace and Commissioners for Declarations Act* (Qld) was passed in 1991. This Act reorganised the JP system into three new categories. These categories are:

1. **Commissioners for Declarations (C.Dec.)**, who perform administrative and witnessing duties such as:
  - Taking statutory declarations
  - Taking oaths and affirmations
  - Taking affidavits
  - Certifying copies
  - Witnessing Powers of Attorney
  - Witnessing Land Title documents
  - Witnessing documents for Births, Deaths & Marriages
2. **Justices of the Peace (Qualified)**, who have the same duties as Commissioners for Declarations, plus all of the judicial (both non bench and minor bench) duties, such as:
  - Issuing summonses
  - Issuing arrest warrants and search warrants
  - Issuing Justice Examination Orders
  - Attending records of juvenile interviews
  - Hearing bail applications
  - Attending searches
  - Witnessing the destruction of particulars
3. **Justices of the Peace (Magistrates Court)**, who can perform all of the duties of a JP(Qual) plus they can: conduct committal hearings; and hear some simple and regulatory offences where the defendant has pleaded guilty.

Justice of the Peace (Qualified) can also be members of QCAT panels where trained JPs are appointed to hear and adjudicate some minor civil disputes up to \$5,000. Include disputes such as residential tenancy disputes, dividing fence disputes, minor debts as well as consumer and trader disputes.





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## Queensland Justices Association

The Queensland Justices Association (QJA) is the peak industry body that represents Justices of the Peace and Commissioners for Declarations throughout Queensland, Australia. Founded in 1918, the QJA has a long history of providing professional support to its members.

It is the largest organisation supporting Honorary Justices in Australia, a major representative body in its field and the Queensland representative on the Australian Council of Justices Association. With a membership base of over 6,500 the QJA provides training, information and resources to its members through a network of over 40 Branch and Contact Groups.

As a Registered Training Organisation (RTO) the QJA is the leading training organisation delivering the accredited **30942QLD Course in Providing Community Justice Services** for prospective Honorary Justices, by providing training courses at venues across Queensland.

The QJA operates as a not-for-profit public company limited by guarantee operating under the laws set down by the Australian Securities and Investments Commission (ASIC) and is governed by a board of directors.

## Office Contact

Phone: (07) 3392 2455 or Toll Free 1800 061 423

Location: 751 Stanley Street, Woolloongabba, Qld.

Postal Address: PO Box 8419, Woolloongabba, Qld, 4102

Email: [admin@qja.com.au](mailto:admin@qja.com.au)

