

Police and the Public: Some observations on policing and Indigenous Australians

Introduction

Ten years ago, along with a general restructuring of police commands (Moore 1994:124), Australian police managers could confidently assert that the formal shift to 'community' policing that had begun some fifteen years earlier was complete. What it meant, however, both in theory and in practice, remained uncertain (Moir & Moir 1992). Nevertheless, most commentators agreed that community policing had been somewhat successful in shifting policing away from largely reactive measures towards more proactive options following a process of community consultation.

Was this shift sustainable? In a study reported by David Moore in 1994, a number of commissioned and non-commissioned police officers from various jurisdictions around Australia were asked for their impressions on the implementation of community policing. The attitudes of respondents were almost equally divided between cynicism and commitment. The differences in the descriptions of community policing from jurisdiction to jurisdiction were, however, significant. Moore concluded thus:

Police agencies are engaged in a delicate balancing act, using community policing primarily as a tactic until the environment of policing changes sufficiently in some distant future. Only then will the public and their parliaments confer full authorisation on police for achieving outcomes beyond those traditional outcomes of arresting offenders ... Community policing in the interim thus remains primarily a strategy to achieve public education and a tactic of enforcing the law more effectively. It is not seen as a strategy for the police organisation *per se* (Moore 1994:134).

A decade later, it is arguable that Australian policing remains in the 'interim' stage observed by Moore. One could also argue that there is little that should trouble us about that conclusion. Over time it has become clear that the chief benefit to Australians of community policing may simply have been its value as a strategy of public education (if not public relations) in fostering effective law enforcement through public trust and strategic alliances.

This observation requires a brief explanation. In the last twenty years in Australian policing there has been a palpable shift away from police assuming sole responsibility for the maintenance of public order towards a model that sees police enjoining others to form partnerships and alliances (Dixon 2005:5). These partnerships involve police working with those groups and professionals who focus not only upon social and economic stability (such as teachers, social workers, employment personnel and recreational officers), but also with those who advocate and advance more specific crime prevention programs, such as the Safety Assist (Safety House) program, Neighbourhood Watch, and Confident Living programs for the elderly. Other partnerships have focused upon community input into how police should conduct themselves, such as Police Accountability Community Teams (PACT) in New South Wales and Local Priority Policing (LPP) in Victoria (James 2005:92).

Moreover, Australian governments have long allowed for a variety of forms of non-government funded policing as well. For example, governments have encouraged an expansion of the roles in public policing currently being played by private personnel and

professional security providers (Prenzler 2000). Police have also become joint partners in many government (local and state) initiatives such as victim-offender mediation programs and juvenile justice 'conferencing' (Daly 2002). The key players in these schemes and programs are often state welfare department representatives, victims' support groups, churches, local councils, educators, private 'restorative justice' proponents and retail association leaders, not the police. This is a fundamental shift in thinking:

Citizens themselves are now considered to have valuable skills, expertise, knowledge and ideas about their own localities and how they could be made more secure and safe. The development of various forms of community-based self-policing initiatives and other forms of community crime prevention bears testimony to the potential role active citizenship can play in improving levels of safety in local communities (Blagg 2003:10).

Significant partnerships have developed in the last decade especially in relation to the policing with and for Indigenous Australians,¹ particularly in remote communities. There is little doubt that Indigenous Australia provides a criminal justice landscape that is disheartening to observers and policy-makers alike. This is not a phenomenon that is confined to Australia. Any review of the history of relationships between police and Indigenous peoples the world over provides a litany of misunderstanding, conflict, neglect, injury and death. Few countries are immune from racial conflict in policing. If a particular crisis occurs, governments are quick to instigate an inquiry. Invariably, these inquiries recommend a range of imperatives for police policy-makers. Too often, very little changes.

The fact remains that many Indigenous Australian lives are significantly impacted upon by crime and disorder on a regular basis. This means that Indigenous peoples are brought into police contact and driven deep into the criminal justice system at vastly disproportionate rates relative to the non-Indigenous population. This issue provides the focus for the remainder of this paper.

Police and Indigenous Australians: a new era of strategic alliances

The legacy of two hundred years of tension-laden police-Indigenous relations in Australia is a massive over-representation of Indigenous Australians in the criminal justice system today. The breakdown of relations between Indigenous and non-Indigenous Australians began early in the colonial experience (Kamira 2001:71–72). Caught up in a world of frontier warfare, attack and reprisal, colonial police, even those who may have harboured some sympathy for native populations, had little option but to carry out their assigned tasks. The upshot of this has been highlighted by Chris Cunneen:

For many Aboriginal people the first contact they had with the police was with a paramilitary force of dispossession, dispensing summary justice and on some occasions involved in the indiscriminate massacre of clan and tribal groups (Cunneen 2001:50).

The modern breakdown in relationships is not simply an historical legacy. Ongoing suspicion and mutual antagonism has been fuelled by the contemporary experience of Indigenous Australians with police as well. Elliott Johnston QC, the report writer for the Royal Commission into Aboriginal Deaths in Custody, commented in 1991 as follows:

[F]ar too much police intervention in the lives of Aboriginal people ... has been arbitrary, discriminatory, racist and violent. There is absolutely no doubt in my mind that the antipathy which so many Aboriginal people have towards police is based not just on historical contact but upon the contemporary experience of contact with many police officers (Johnston 1991:195).

1 An Indigenous Australian can be either an Aboriginal person or a Torres Strait Islander. For the most part, the discussion in this paper is about Aboriginal Australians, although the term Indigenous and Aboriginal are used interchangeably.

There are currently approximately 366,000 Aboriginal Australians and 26,000 Torres Strait Islanders in Australia. For many of them, the justice landscape remains bleak. While the numbers of deaths in police lock-ups appear to have been reduced Australia-wide, perhaps because clearer guidelines dictate how an Aboriginal person must be treated when first taken into custody, some argue that little has changed in some jurisdictions, especially in relation to so-called 'public order' offences and policing (Jochelson 1997). More recent evidence confirms suspicions. In 2000, Boyd Hunter made a national comparison of Aborigines who are arrested with those who are not. He found that nearly one third of the adult Indigenous population of Australia had been arrested by police in the previous five years. Indigenous Australians who are unemployed, drink alcohol or have been physically attacked or verbally threatened, the research found, are much more likely to be arrested by police compared with other Indigenous Australians who are employed or do not drink alcohol or have not been physically attacked or verbally threatened (Hunter 2001).

Indigenous young people receive fewer police cautions and more referrals to court when compared with non-Indigenous young people (Anscomb 2005:112; Cunneen 2001:136). Recent South Australian evidence indicates that only 18.7% of Aboriginal apprehensions result in a formal caution compared with 30.9% of non-Aboriginal apprehensions. 63.5% of Aboriginal apprehensions result in a referral to court compared with 45.3% of non-Aboriginal apprehensions (Wundersitz & Hunter 2005:10).

Moreover, Indigenous Australians are less likely to get bail upon arrest than non-Indigenous arrestees, essentially because they are more likely to have a record of previous offending and bail flight (Luke & Cunneen 1998:20). Aboriginality is significantly associated with the likelihood of one being remanded in custody from the courts, too (Wright 1999). In this study, John Wright tracked 4,758 adult defendants whose cases were finalised in 1996 in South Australian magistrates courts. Twenty-five legal and extra-legal remand-in-custody predictors derived from the court and police data were fed through multivariate regression analysis. The study concluded that Aboriginality is significantly associated with a custodial outcome, independent of any other variable in the model. This study is especially significant given the findings of an Australian remand in custody comparative study that suggests that the role police play in denying bail (including court bail) is a crucial one (Bamford et al. 1999:19).

Consider also the evidence of the racial origin of remandees in South Australia and Western Australia (where the attitude is that those charged with assault can expect to be remanded in custody) compared to Victoria (where such an assumption does not prevail). Of Indigenous remandees in South Australia and Western Australia at June 1997, 29 per cent were there with 'assault' as the most serious offence charged. In Victoria there were no Indigenous remandees charged with assault *at all* (Bamford et al. 1999:65). In other words, extra-legal issues appear to be more instrumental in determining justice outcomes than criminal conduct *per se*. It should come as no surprise, then, that a study reported in 2000 by the South Australian Office of Crime Statistics and Research (OCSAR) on Aboriginal involvement in the Magistrates Courts in South Australia found that Aboriginal involvement was 10.9 times higher than would be expected on a *per capita* basis (South Australia 2000:3).

The malaise continues into the twenty-first century (Lincoln & Wilson 2005:222). For example, in 2001, more than 10% of Aboriginal men aged between 20 and 24 received a prison sentence in New South Wales (Weatherburn et al. 2003 cited in Weatherburn 2005:140). Moreover, for the period 1993–2003, Indigenous female imprisonment rates rose 54%, while rates for non-Indigenous female Australians rose only 48% (Brown

2005:111). The figures for juveniles in custody are no less troubling. Reviewing the figures for average daily secure custody occupancy by racial identity in 2003 in South Australia, researchers found that Indigenous youth, less than two per cent of the relevant population, accounted for 35.5% of the total daily average (Wundersitz & Hunter 2005:19).

Ideas and initiatives

In their attempts to transform police-Indigenous conflicts into workable strategies and effective solutions, police managers have had their share of failures (Sarre & Sparrow 2002). Nevertheless, there remains some reason for optimism. Non-government and government partnerships and inter-agency networking have created an environment of alliances in the hope that the statistical trends described above can be stalled and reversed. Three of these ideas and initiatives are discussed below.

Juvenile justice diversion in South Australia's Indigenous lands

There has been a significant development in the policing of young Indigenous people in South Australia's Far North (Indigenous lands), focusing upon improved relationships between police and Indigenous communities. Over the last few years, Chief Inspector James Blandford has developed a policy with regard police cautioning and Indigenous youth diversion, in consultation with the Aboriginal Legal Rights Movement (ALRM) (Blandford 2004). In this policy, Chief Inspector Blandford makes it clear that it is South Australia Police's (SAPOL) responsibility to make every endeavour to divert youth away from the court system (principally into formal and informal cautions and 'family conferencing') while ensuring that young people take responsibility for their actions. The following is now required of police when dealing with all youth in the Far North Local Service Area (LSA):

When officers seek to interview a youth for an alleged offence, they will, prior to this interview, have made sufficient enquires to determine if and how they intend to divert the matter. This should form *a natural part of their investigation plan*. They are to communicate this intent to ALRM, prior to the interview, so that ALRM can give their client accurate advice and receive informed instructions. Cautioning Officers are to respect this when reviewing files. Whilst there will be occasions when the Cautioning Officer may not agree with the initial assessment, these concerns should be fully noted for the information of the Youth and Community Officer and Far North Criminal Justice Section. The important issue here is that communications had with ALRM and suspects, at the time of interview, should be based on fact and communicated in good faith (Blandford 2004:2) (emphasis added).

Of crucial importance to the policy is the requirement of investigating officers to consider *where* they intend to divert the alleged offender as part of their investigation into the offence, and to be able to advise legal representatives prior to the interview of their intentions. Whilst ALRM are often caught in a policy dilemma (being present whilst their clients make admissions to police), the policy has made a difference. The number of youths who are diverted in the first instance rather than having to be called before the court has increased (Blandford 2004). More importantly, police themselves are now much more aware of the power of youth diversion and the positive effects of formal cautioning and referral to family conferences where there is now a 100% attendance rate (personal correspondence, James Blandford). The key to success has been the emphasis upon the possibility of diversion as a natural and integral part of the police investigation.

The Aboriginal court experience in South Australia

Non-appearances at court by Indigenous offenders provide much work for police in tracking down and arresting those accused persons who have failed to answer their bail. Non-appearance, then, has two major consequences for police and Indigenous relations: offenders are likely to be arrested by police on warrant, and the likelihood of bail being refused at the next hearing is extremely high. One initiative, jointly conceived and coordinated between Indigenous communities, police, courts and welfare agencies, that has reduced the rate of non-appearances (and therefore rates of arrest and custodial remand) is the 'Aboriginal Court'.

The first Indigenous urban court was convened in Port Adelaide, South Australia on June 1, 1999, the brainchild of Chris Vass, a criminal lawyer who practised for five years in Adelaide before being appointed a magistrate in 1980. After being trialled successfully as a pilot project over six years, Aboriginal courtroom arrangements have now been established in three regions in South Australia (informally known as Nunga courts) (Tomaino 2004) and in Victoria (Koori courts) and Queensland (Murri courts). Victoria has enacted specific legislation, an amendment to the *Magistrate's Court Act 1989 (Vic)*, to establish the court (Marchetti & Daly 2004:2; Freiberg 2005:159) and the South Australian courts have been recognised under the *Statutes Amendment (Intervention Programs and Sentencing Procedures) Act 2003 (SA)*.

Aboriginal courts sit on a regular basis, and are designed for Indigenous offenders only. The only stipulation for participation is that defendants must enter a guilty plea to their charges. The environs of the court are adapted to make them less intimidating for the offender, with an emphasis being placed on informality. The offender is seated at the bar table rather than standing in the dock. The magistrate sits at eye level with the offender. Next to the magistrate sits an Aboriginal Elder. The magistrate takes advice from him or her as to sentencing options. The Elder is actively involved throughout the process and will often have some prior knowledge of the offender that might be relevant to the sentencing process. The Elder is accorded a significant role, going some way towards restoring their status in the justice system which has been eroded over many years. The Elder's presence and consultation with the magistrate gives the relevant Indigenous community a voice that is neither tokenistic nor paternalistic (Lincoln & Wilson 2005:226).

Another feature of the court is the involvement of the offender in the process. In 'mainstream' magistrates court cases, offenders are passive participants in the case, with a legal practitioner speaking on their behalf. In the Aboriginal Court, there is direct dialogue between the magistrate and the offender, despite the presence of legal counsel. This is of special importance to offenders as they are able to become more involved and accountable for the actions that have brought them before the court. It also makes the administration of justice more immediate, as cases are not allowed to be delayed indefinitely.

While there has been no testing for evidence of reductions in crime or recidivism as a direct result of the Aboriginal court initiative, there is evidence of a significantly higher rate of attendance by offenders. A count was conducted of attendance levels from 3 June 2003 to 4 June 2004:

[T]he defendant was present in court in almost three quarters of the 504 cases dealt with in the twelve months ... More importantly, in almost two thirds of these cases, the defendant attended voluntarily rather than from custody. While no comparative data are currently available on Aboriginal attendance levels at mainstream court hearings, anecdotal evidence indicates that they are considerably lower (Tomaino 2004:7).

These factors, in turn, encourage the wheels of summary justice to turn more effectively. Concomitantly, the potential for acrimonious contact between police and accused persons is lessened, allowing for improved relationships and stronger alliances.

Indigenous self-policing: community 'night' patrols

Another significant initiative is the idea of Indigenous-run community 'night' patrols, over one hundred of which are in place around Australia. They operate in a diversity of remote, rural and urban areas of Australia. They are designed to intervene in Indigenous Australians' lives in a culturally appropriate way, and to divert them from a range of potential hazards and conflicts (Blagg & Valuri 2004). Night patrols (on foot or in vehicles) provide a watchful eye over a community or may be called to respond to an incident. One of the best known is the Tangentyere Night Patrol and Social Behaviour Project in Alice Springs, an operation designed to take drunk and disorderly people into care before police need to be called to arrest them (Tangentyere Council 2001). Similarly structured Aboriginal Community Patrols in Kempsey Shire Council and Denilquin, New South Wales (amongst others) have been funded since 2001 by the New South Wales Attorney-General's Department's *Indigenous Justice Strategy*.

There is little doubt that they have the confidence of the communities in which they work:

Patrols generally have the support of local police, who may use them to assist in their dealings with the community. In addition, Indigenous patrollers have a strong relationship with the community with whom they deal. This may include family, tribal or clan affiliations, without which patrols may not have the cultural authority to operate successfully (Blagg 2004:1).

The evidence of the effectiveness of night patrols in reducing crime and recidivism remains, however, inchoate. For example, few, if any, night patrols have been evaluated, although there are plans to test key indices such as victimisation rates, alcohol consumption, lock up rates, road accidents, rates of school attendance and rates of family violence, not just crimes reported to the police (Blagg 2003:77). What we can glean from the qualitative data is that, in the words of the key researcher in the field, 'community members and the police believe that patrols have improved community safety and reduced the incidence of crime, fear and violence in communities' (Blagg 2004:1).

Elsewhere in Australia one can find other examples of this style of 'self-policing', including Community Justice Panels in Victoria (Cunneen 2001:193) organised in a manner not unlike the way in which the government of Canada allows its First Nations communities to establish, in certain circumstances, their own 'policing' arrangements (Murray 1996:122). These strategies, generally, are designed to improve relationships, trust and communication between police and Indigenous communities, to be mutually inter-dependent, and to provide a complementary 'policing' service (Blagg 2003:78).

Discussion

The view of the social anthropologists and international jurists of the eighteenth century colonial period was that Antipodean 'natives' had no system of law of their own (Sarre 2000). It would never have been thought, as a corollary, that 'natives' would have the ability to service their own policing needs. That view is changing significantly, given the development of 'community' partnerships, the implementation of diversionary programs and 'preventive' courts, and initiatives towards Indigenous self-policing. This change has been forged by the realisation that offending behaviour in Indigenous communities is inextricably linked to, and enmeshed with, victimisation, substance abuse and poverty.

Indeed, in its *Future Directions Strategy*, SAPOL committed itself to programs and initiatives designed to 'maximise the participation rate of diverse community groups in community-based policing programs' (SAPOL 2003:23). Professional partnerships have linked SAPOL with health authorities, sobriety groups, educational authorities and post-release housing agencies, many of which have an especial mandate to liaise with Indigenous groups and communities. Thus policing with and for Indigenous Australians has been addressed from an array of welfare and social justice perspectives, not just from the perspective of law enforcement.

This is not to say that the quest is easy, or without its critics. According to some commentators, there is always a danger that such strategies do not extend beyond mere 'indigenisation' of existing practices and policies (Cunneen 2001:225). Others have been critical of the ambiguities and cultural contradictions associated with 'negotiated justice' where non-Indigenous interests remain paramount (Broadhurst 2002:277).

Be that as it may, in South Australia, if not elsewhere, there is some evidence that effective inter-agency cooperation is providing optimistic outcomes for policing for all Australians, Indigenous and non-Indigenous. Increased levels of cooperation between police and Indigenous leaders and greater understanding by police of the problems confronting Indigenous communities have led to, arguably, greater mutual trust. That is, empirical evidence of effectiveness in Indigenous communities remains largely elusive, but the examples provided above indicate that a commitment to relationship-building through effective alliances can provide a foundation upon which more effective policing can be built.

Conclusion

While the 'community' policing model may have had theoretical flaws, it has left a legacy that is providing viable options for at least one important issue for contemporary Australian policing: effective policing of and for Indigenous Australians. The key to these successful policing initiatives appears to be the ability of police to interweave and coordinate policing 'networks', to mobilise the community sector, and to integrate police alliances into existing community structures, all themes that were developed during the years of community policing as a strategic priority.

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