

ISSN 0085-7033



THE UNIVERSITY OF SYDNEY
FACULTY OF LAW

INSTITUTE OF CRIMINOLOGY

Faculty of Law

The University of Sydney

173/175 Phillip Street

Sydney, N.S.W. 2000

Australia.

PROCEEDINGS
of the
INSTITUTE OF CRIMINOLOGY

No. 69
POLICING PUBLIC ORDER

REGISTERED IN AUSTRALIA FOR TRANSMISSION BY POST AS A BOOK

1

**INSTITUTE OF CRIMINOLOGY
SYDNEY UNIVERSITY LAW SCHOOL**

Address: 173-175 Phillip Street, Sydney, N.S.W. 2000

The Institute of Criminology is an organization within the Department of Law of the Sydney Law School for teaching and research in criminology and penology.

STAFF

Director

Professor Brent Fisse, LL.B.(Cantuar.), LL.M. (Adelaide) (*Criminal Law*).

Deputy Director

P. G. Ward, M.A., B.E.(Sydney) (*Statistics*).

Associate Professor

S. D. Hotop, B.A., LL.M(Sydney) (*Criminal Law*).

Senior Lecturers

G. L. Certoma, Dott. Giur.(Firenze), B.A., LL.M.(Sydney).

B. A. McKillop, LL.M.(Harvard), B.A., LL.B., B.Ec.(Sydney) (*Criminal Law*).

Dr R. T. Stein, LL.B. (A.N.U.), LL.M.(Dalhousie), PhD.(Sydney), A.Mus.A. (A.M.E.B.).

Lecturers

J. A. David, LL.B.(A.N.U.) (*Criminal Law and Criminology*).

G. B. Elkington, M.Sc., Ph.D.(Warwick), B.Sc., LL.M.(Sydney) (*Criminal Law*).

Dr. P. B. Shea, B.H.A., Grad.Dip.(Health Admin.)(N.S.W.), B.A., Dip.Env.Stud.,

M.Env.Plan.(Macquarie), M.B., B.S., M.P.H., D.P.M., Dip.Crim.(Sydney),

F.R.A.N.Z.C.P., F.R.A.C.M.A., F.A.I.M. L.H.A. (*Forensic Psychiatry*;

Part-time).

S. Yeo, LL.B.(Singapore), LL.M.(Sydney & Wellington) (*Criminal Law and Criminology*).

Research Assistant

G. B. Coss, LL.B.(Sydney).

Publications Officer

D. M. Langley, M.B.E., B.Sc., Dip.Diet.(Melbourne), Dip.Crim.(Sydney).

Secretary

E. Bohnhoff J.P.

N.S.W. ADVISORY COMMITTEE

Chairman

The Honourable Sir Laurence Street, Chief Justice of New South Wales.

Deputy Chairman

The Honourable Mr Justice J. A. Lee, a Justice of the Supreme Court of New South Wales.

Members

- K. S. Anderson, Dip.Crim.(Sydney), Deputy C.S.M.
- J. K. Avery, M.A.(Macquarie), Dip.Crim.(Sydney), New South Wales Commissioner of Police.
- Dr. J. Braithwaite, Senior Research Fellow, Research School of Social Sciences, Australian National University.
- C. R. Briese, B.A., Dip.Crim.(Cantab), C.S.M.
- The Honourable F. X. Connor, A.O., Q.C., President, Australian Law Reform Commission.
- V. J. Dalton, Chairman, Corrective Services Commission.
- T. S. Davidson, Q.C., President, Mental Health Tribunal.
- Dr Sandra Egger, B.Psych.(Hons), Ph.D.(W.A.), Premier's Department.
- Dr J. H. T. Ellard, A.M., M.B., B.S., D.P.M., M.R.A.C.P., Consulting Psychiatrist; Commissioner (Part-time), Corrective Services Commission.
- The Honourable Mr Justice K. E. Enderby, a Justice of the Supreme Court of N.S.W.
- Dr P. Grabosky, Ph.D.(Northwestern), Senior Criminologist, Australian Institute of Criminology.
- M. Gray, Q.C., Senior Public Defender, New South Wales.
- Professor R. W. Harding, Director, Australian Institute of Criminology.
- Gordon Hawkins, B.A.(Wales), LL.M.(Sydney).
- F. D. Hayes, A.M., M.A., Dip.Soc.(New South Wales), Dip.Soc.Stud., Dip.Crim.(Sydney), M.Litt., Dip.Ed.(M.C.A.E.), Commissioner (Part-time), Corrective Services Commission.
- H. Heilpern, Director, N.S.W. Department of Youth and Community Services.
- G. James, Q.C., B.A., LL.B.(Sydney).
- R. W. Job, Q.C., Chairman, N.S.W. State Drug Crime Commission.
- The Honourable Mr Justice M. D. Kirby, C.M.G., President, Court of Appeal, Supreme Court of N.S.W.
- J. A. Morony, F.R.I.P.A., President, Repatriation Review Tribunal.
- J. Oxley-Oxland, B.A., LL.B.(Rhodes), LL.M.(Yale), Senior Lecturer in Law, Department of Accounting, University of Sydney.
- Professor C. Phegan, Dean, Faculty of Law, University of Sydney.

H. F. Purnell, A.M., Q.C., LL.B.(Sydney).

The Honourable Mr Justice R. M. J. Purvis, Family Court of Australia, Presidential Member of the Administrative Appeals Tribunal.

M. S. Robertson, B.A.(Sydney), Director, Probation and Parole Service of New South Wales.

Emeritus Professor K. O. Shatwell, M.A., B.C.L.(Oxford).

Mrs B. Shatwell, B.Com.(Tasmania).

The Honourable T. W. Sheahan, B.A., LL.B.(Sydney), M.P., Attorney-General and Minister assisting the Premier.

E. J. Shields, Q.C.

The Honourable Mr Justice J. P. Slattery, a Justice of the Supreme Court of New South Wales.

His Honour Judge J. H. Staunton, C.B.E., Q.C., LL.B.(Sydney) Chief Judge of the District Court of New South Wales.

Dr A. J. Sutton, B.A. (Hons.) (Melbourne), Ph.D. (London), Director, Bureau of Crime Statistics and Research, New South Wales.

The Honourable F. J. Walker, LL.M. (Sydney), M.P., Minister for Housing and Minister for the Arts.

Dr G. D. Woods, Q.C., Ph.D., LL.M., Dip. Ed. (Sydney).

Dr F. W. Wright-Short, M.B., B.S., D.P.M., M.R.A.N.Z.C.P., Consultant Psychiatrist.

Special Adviser on Alcohol and Drug Addiction

Dr M. S. Dalton, M.A.(Edinburgh), M.D.(Lausanne), M.R.C.Psych.(London), M.R.A.N.Z.C.P., D.P.M.(R.C.P.&S.).

Overseas Correspondents

Professor Duncan Chappell, Chair, Department of Criminology, Simon Fraser University, British Columbia.

Professor John C. Coffee, Jr., Law School, Columbia University.

Professor Gilbert Geis, Departments of Social Ecology, University of California (Irvine).

Professor Robert L. Misner, College of Law, Arizona State University.

Professor Franklin Zimring, Earl Warren Legal Institute, University of California (Berkeley).

**INSTITUTE OF CRIMINOLOGY
SYDNEY UNIVERSITY LAW SCHOOL**

Proceedings of a Seminar on

POLICING PUBLIC ORDER

Convenor: Dr A. J. Sutton, Director, Bureau of Crime Statistics and Research, N.S.W.

CHAIRMAN:

The Honourable Sir Laurence Street, Chief Justice of New South Wales

30th July 1986

State Office Block, Sydney

© Policing Public Order No. 69, University of Sydney. This book is copyright. Apart from any fair dealing for the purposes of private study, research, criticism or review as permitted under the Copyright Act, no part may be reproduced by any process without written permission. Enquiries should be addressed to the Director, Institute of Criminology, University of Sydney, c/- the Law School, 173-175 Phillip Street, Sydney, N.S.W. 2000, Australia.

TABLE OF CONTENTS

	Page
Foreword	9
<i>J. K. Avery, M.A.(Macquarie), Dip.Crim.(Sydney), Commissioner of Police, N.S.W., Member of Advisory Committee, Institute of Criminology.</i>	
Avoiding Too Much Order with Too Little Law	11
<i>Father Frank Brennan, S. J., Jesuit Theological College, Parkville.</i>	
Presentation of Paper	22
The Crisis of Policing Public Order	26
<i>Mark Findlay, Fellow in Justice Administration, Mitchell College, Bathurst; Consultant Criminologist, Bureau of Crime Statistics and Research, N.S.W.</i>	
Presentation of Paper	54
Structuring the Police Forces to deal with Public Disorder	61
<i>Dr. Grant Wardlaw, Senior Criminologist, Australian Institute of Criminology.</i>	
Discussion Papers:	
1. Public Order and the Law.	72
<i>John Parnell, Stipendiary Magistrate.</i>	
2. Towards trends and a suggested Antidote	73
<i>Gill Boehringer, Law School, Macquarie University</i>	
Presentation of Paper	80
Discussion	83

FOREWORD

*John Avery, M.A., Dip. Crim.
Commissioner of Police, N.S.W.
Member of Advisory Committee, Institute of Criminology*

The issues canvassed in the 'Policing Public Order' Seminar are timely in the light of the recent overseas experience with public disorder both at public gatherings and in a limited number of communities.

Frank Brennan's historical analysis of the Queensland positions allows us to see the difficulties which can arise when limits are placed on the citizen's rights to free association and protest. As pointed out by Father Brennan, a policy of consultation and co-operation is by far a more effective tool than confrontation.

The main concern of Frank Brennan seems to be summed up in his belief that public order maintenance is more difficult for police: when a government uses a police force in an order situation for its own political ends, when consultation fails or does not take place, and when the courts are perceived as failing to exercise their customary rigour on public order cases brought before them.

Mark Findlay's analysis of the Bathurst Motorcycle Races and the confrontation between police and cyclists contributes in the best academic tradition, a vigorous appraisal of what actually happens in this type of situation.

Mr Findlay, like Lord Scarman, makes a significant contribution from first hand research by raising major public policy issues. Firstly, the use of public disorder situations to secure political support for expanded police resources dedicated to disorder situations; and secondly, the issue of special courts established to deal with persons charged as a result of this conflict.

The findings and recommendations of Mr Findlay's report are of great interest to the New South Wales Police and I believe that the comments made will not only assist in this specific situation but in a more general sense in our policies and practices in policing public order.

Dr Wardlaw's analysis seeks to argue that a balance must be sought between 'hard' and 'soft' styles of policing, and that police discretion must be exercised after open and informed public debate. He, as I, believes that the police must protect and preserve individuals' rights and freedom.

The N.S.W. Police are committed to involving the community in those aspects of policing which directly impact on the quality of community life. We recognise that the people of this State give us their money and their authority, the more valuable being their authority. By pursuing a model of community based policing through consultation and negotiation, we believe that this authority will be best exercised.

I wish to thank the Institute of Criminology, Sydney University Law School, for its continuing commitment to raising publicly issues of significant merit. It is only through open and free discussion that critical public issues can be raised and resolved.

AVOIDING TOO MUCH ORDER WITH TOO LITTLE LAW

Frank Brennan, S. J.
Theological College, Parkville, Victoria

The Queensland Street March Ban — A Government Experiment in Repression.

As you know, in Queensland we have been relatively free of the public disorder which has in recent times reached considerable magnitude in certain other parts of the world. I do not think that it has always been appreciated just how fortunate we have been in this country that public order has been maintained without violent clashes between conflicting groups or between dissident groups and lawful authority.¹

So wrote the Premier of Queensland, Mr Johannes Bjelke-Petersen on 23 April 1969. Twelve years later the Governor of Queensland said:²

We, in this country today, can be grateful that our predecessors, the colonisers of this land, brought with them and instituted the practices of English Law. For it is a dynamic system.

It can, and must, and will evolve to solve and meet the changes in social, industrial and international relationships taking place in the world today.

‘Law and Order’ is one of today’s important political issues. There is a danger, however that we try to achieve too much order with too little law, by bypassing the processes we have inherited from those eight centuries of experience and hard fought battles against tyranny. The people of Queensland look to the law to defend their rights.

Something had changed.

In September 1977, the Premier had proclaimed: “The day of political street march is over. Anybody who holds a street march, spontaneous or otherwise, will know they’re acting illegally . . . Don’t bother applying for a march permit. You won’t get one. That’s Government policy now.”³ This proclamation was echoed by the acting police commissioner, and was police policy until April 1978. Brisbane police prohibited most political street marches until August 1979.

Government supporters claimed that the political street march was a recent phenomenon staged for the benefit of modern news media. They said there was no common law right to demonstrate, and police had no choice but to implement the law in its full rigour. They claimed the Queensland system for regulating public meetings and processions was no different in principle and in substance from that adopted in any other state of Australia.

Civil liberties advocates said the new government policy high-lighted the defect in public order machinery which required the obtaining of police permission for a political demonstration on a street or footpath. They claimed the inalienable right to demonstrate against government policies was the hallmark of constitutional democracies, and they urged police to avoid a needless polarization of the community.

The police refused to confer with the demonstration organizers and adopted the tactic of all-out confrontation at demonstrations, which resulted in 1,972 arrests. Since 1897, there has been a legal requirement in Queensland that written permission be obtained for the holding of any procession or public meeting upon a road. The only legislative change made by the Queensland Parliament to the *Traffic Act* covering such permits in 1977 was the abolition of the right of appeal to a magistrate by an applicant aggrieved by the refusal of a permit by the Queensland Police.⁴ This minor change

1. Letter of J. Bjelke-Petersen to R. Wensley, 23 April 1969.

2. Address by His Excellency, Governor of Queensland, Opening of Law Courts, Brisbane, 2 September 1981.

3. *Courier Mail*, 5 September 1977.

4. s.57A, inserted in *Traffic Act* by *Traffic Act Amendment Act* 1977.

immediately achieved the Government's intention to quash all legal attempts by the Campaign Against Nuclear Power lobby to protest publicly in Brisbane during the next two years.

The two year march ban did not arise out of threats to the public peace of dimensions unknown before or after the ban or any different from the minimal threats in other jurisdictions of Australia during that time. There is now doubt about the social costs incurred from that ban including the loss of liberty by almost 2,000 persons who were detained in custody, alienation and frustration of the citizens who wished to express concern and moral outrage about the decisions of Government on an important question (namely the export of uranium without the guarantee of what they saw to be adequate safeguards), a further loss of respect and community acceptance of the Queensland police force, protracted disruption of traffic and business within the metropolitan area of Brisbane, clogging the Brisbane Magistrates' Courts for months on end, and involvement of the courts in determination of cases clouded with political controversy.

Not only did the ban interfere needlessly with the right or liberty of people to assemble, process and protest publicly; it also threatened law and order rather than preserving it; it disrupted traffic flow rather than facilitating it. The march ban was not only morally objectionable; it was stupid.

On 31 October 1977, after the commencement of the ban, Mr Lewis the Queensland Police Commissioner submitted his first *Annual Report* for the year ended 30 June 1977 which stated:⁵

Public behaviour in the streets, during the year under review has been generally good throughout the State.

Some organisations have mounted street demonstrations and marches, mainly in Brisbane, but these were dealt with by police with firmness and tolerance.

Police permitted all lawful demonstrations to take place, but ensured that they were under control at all times. There were only isolated cases of minor conflict between police officers and groups of demonstrators in the streets.

Widespread demonstrations which unfortunately followed His Excellency the Governor-General throughout Australia also were experienced in Queensland.

These demonstrations, however, did not attract the numerical support or violence which attended other demonstrations outside this State.

Clearly, even the Queensland police were happy with the state of public order in the streets prior to the Government's proclaimed ban.

Almost Returning to Common Sense

The march ban was lifted in July 1979; not surprisingly the *Annual Report* of the Queensland Police for the year following the lifting of the ban states:⁶

There was a dramatic change in the number of public demonstrations involving civil disobedience of the law compared to previous years.

Only three incidents of any significance occurred, compared with 35 for the previous year. Naturally, the involvement of police was heavily reduced and the number of people arrested fell from 962 last year to 12 in the year under review.

Eight permits were issued to protest groups for street marches in the metropolitan area during the year. No serious problems resulted and they were conducted within the conditions imposed by the District Superintendent of Traffic.

Next year things improved again. The 1981 report states:⁷

5. Queensland Police, *Annual Report* 1977, p.12.

6. Queensland Police, *Annual Report* 1980, p. 19.

7. Queensland Police, *Annual Report* 1981, p. 18.

There was a continuing marked improvement in public behaviour during the year.

While it is clear that crime in general is increasing, the general behaviour of large gatherings of people for a variety of purposes has shown a definite improvement over previous years. The level of public demonstrations for various causes has eased, and those that were held did not require police involvement other than in normal crowd or traffic control roles.

The visible presence of uniformed police on the streets and at venues where large crowds gather has a calming effect on crowd behaviour and, when this is complemented by the purposeful campaign which has been pursued over a number of years to improve the standing of police officers in the public eye, it ensures support for police officers from an extremely large majority of the community.

As if that was not enough improvement, the 1982 report states:⁸

There was a continuing marked improvement in public behaviour during the year.

While it is clear that crime in general is increasing, the general behaviour of large crowds of people gathered for various purposes has shown a definite improvement over previous years. The level of public demonstrations in support of differing causes has eased, and those that were held did not require police involvement other than normal crowd or traffic control.

The visible presence of uniformed police on the streets and at venues where crowds gather has a calming effect on crowd behaviour. When this is complemented by a purposeful campaign which has been pursued in recent years to improve the standing of police officers in the public eye, the support of a large majority of the community for police officers is ensured.

Queensland Police, having abandoned the Government policy of all-out confrontation, returned to a policy of consultation and co-operation. During the Commonwealth Games in 1982, there was some attempt at consultation and co-operation with demonstration organisers. But the conduct of police was affected by their political perceptions and speculations about protesters' states of origin. The 1983 *Annual Report* states:⁹

There were very few instances of civil disorder during the year and as a result the need to commit large numbers of police to restoring order was again greatly reduced.

There was again a reduced number of issues which attracted large public demonstrations with a potential for disruption and lawlessness. The only real problems in this area came during the Commonwealth Games when several rallies were held to support Aboriginal land rights and people from southern States swelled the ranks of local protestors.

Despite rallies which were held on this theme during the period, on only three occasions did extremist element succeed in attracting enough support for illegal marches. Police reaction was prompt and restrained and all situations were resolved quickly and with a minimum of disruption to the community.

After the Games, the politics once again dropped out to protest and its policing in Brisbane. The 1984 *Report* claimed success in "the more sympathetic approach by police officers to crowd control":¹⁰

There was a marked improvement in public behaviour during the year, and therefore there was virtually no need to commit large numbers of police to maintaining the public peace and good order.

⁸. Queensland Police, *Annual Report* 1982, p. 18.

⁹. Queensland Police, *Annual Report* 1982, p. 22.

¹⁰. Queensland Police, *Annual Report* 1982, p. 20.

A visible police presence at every major public gathering minimized unruly activities by the minority which can ruin the enjoyment of other patrons. It appears that the Department's efforts to improve its community standing through more positive media and public relations programmes is having a significant effect. Instances of abuse and unpleasantness towards police officers performing their normal duties are less prevalent today than in years past.

Despite the more sympathetic approach by police officers to crowd control and a desire to work and play in close harmony with the community, trouble-makers can be assured that police will take firm actions where offences are committed and will continue to protect the interests of the public at large.

More Repression

But then came the SEQEB power dispute in which police were deployed on another political mission similar to that of 1977-1979. At the behest, or at least in accordance with the wishes, of government, the police reverted to confrontation tactics with picketers outside SEQEB premises. Despite the claim in the 1985 *Report* that "These incidents . . . were well contained and passed off without any major commitment of police resources",¹¹ unnecessary escalation of confrontation and the loss of 'law and order' have resulted from wooden implementation of antiquated provisions of the Queensland *Traffic Act*, the exercise of police discretions directed by or at least coincident with government policy, and the relentless exercise of even wider police powers accorded by the *Electricity (Continuity of Supply) Act* 1985. Under that Act, a police officer can arrest any person whom the officer believes on reasonable grounds to have done any act or made any omission calculated to annoy or distress any SEQEB employee at work or on their way to work.¹²

The Queensland Government's handling of the power dispute was criticised in many quarters, as was the street march ban in 1977-79. Those criticisms received the now characteristic treatment of a long entrenched government. For example, after the Primate of the Anglican Church in Australia, Archbishop Sir John Grindrod, had defended the workers' right to strike, the Premier Sir Joh Bjelke-Petersen said "he refused to believe a church leader would condone the actions of unionists."¹³ When the Archbishop of Canterbury arrived in Brisbane and expressed public support of the Primate's views, the Premier urged Dr Runcie to "go back to London and try and do his job of filling those seats." He said, "I am staggered when I go to London and attend church, and I am about the only person there in the great big buildings."¹⁴

In support of sacked workers, a group known as the Concerned Christians conducted prayer vigils at early morning pickets ensuring that they did not impede any person's movement, merely singing hymns and standing behind wooden crosses. The abuse of police power was highlighted by the arrest and subsequent acquittals of some of these 'Concerned Christians'. In the joint hearing of charges against 10 Concerned Christians, the prosecutor showed the scope police were attempting to give to an offence of acting in a way calculated to annoy or distress another. He submitted to the magistrate:¹⁵

Your worship, . . . not to be ultra-crude, but to use something which I think is clearly understandable, "if you have the crow of a beak, the feathers of a beak, the feet of a beak, you can't be mistaken for a duck." Now, . . . my primary point is

11. Queensland Police, *Annual Report* 1985, p. 19.

12. *Electricity (Continuity of Supply) Act* 1985, ss.5, 5A.

13. *Courier Mail*, 9 April 1985

14. *Courier Mail*, 17 April 1985.

15. Magistrates Court Transcript of Proceedings, No. 7893 of 1985, Mr Fardon S.M., reproduced in "Concerned Christians and Their Involvement in the Dispute", M. McGregor-Lowndes, *Trinity Occasional Papers*, Vol. 4, No. 2, Trinity Theological College, Brisbane, pp. 78-79.

this. The actions of these defendants was in fact encouragement to the other demonstrators and in the converse, or ancillary to that, it was discouragement to the SEQEB workers, by their attendance, by their very attendance. Your Worship, it's not outside reality from the ordinary man test, to put ourselves in the place of a SEQEB worker at that location at that time, or in the case of a SEQEB worker, watching the news on that evening. Now your worship can take judicial notice of the fact that these matters were presented on the news. Now, either of those SEQEB workers could make a realistic comment to themselves in these terms, "even the church is against me".

Fortunately this submission failed as did the prosecution of many Concerned Christians. In eleven such cases, the prosecutors sought orders to review from the Supreme Court of Queensland. In each case the order nisi was discharged as

it could not be said that the stipendiary magistrate . . . was wrong in concluding . . . that he was not satisfied that the conduct of any of the respondents was calculated, that is, intended or designed to harass any employee on account of his performance or work.¹⁶

Protestors not boasting the appellation 'Concerned Christian' have had a harder time of it in the courts. One convicted picketer, unsuccessful in seeking an order to review, was in a group separate from the Concerned Christians who were singing hymns and holding crosses.

Members of this group were calling out words such as 'Scab', 'Victory to the E.T.U.' and other slogans, but there is no evidence that the appellant was doing so . . . Members of the group all linked their arms together and started chanting slogans such as 'Reinstate the linesmen', 'Give the sack to Joh' and 'Victory to the E.T.U.', although the evidence did not show that all the persons in the group were chanting such slogans or, in particular, that the appellant was doing so.¹⁷

Nonetheless the Supreme Court discharged the order nisi on the basis that there was evidence to support "the conclusion that the act of the appellant was calculated to harass employees of the Board".¹⁸ He just happened to be standing with the wrong mob. The High Court has granted special leave to appeal in this case.

Upholding law and order is one thing, but protecting the sensibilities of power workers from the prayerful presence of Concerned Christians and even from vocal government critics is another. As with the street march ban, the concern of the Queensland police to do the government's bidding has again resulted in a breakdown rather than a preservation of law and order.

The Importance of Public Protest

If constitutional democracies are to be more than elected dictatorships, they must maintain legal and protected means for the citizen's expression of political discontent. It is facile to claim that the vote, access to a local member, and the availability of a free press are sufficient means. There are some political issues that prompt feelings of moral outrage in the citizenry. The legal and protected means must include means for the communication of such outrage. The most usual means for such communication are the public procession and assembly. A person's physical presence at a place or an event is the most powerful means of expression for one believing in or committed to a particular cause, a person, or collection of persons. In society, a public gathering of persons is the most powerful means for expression of solidarity to the group and

16. *Betts & Others v Cribb & Others, Ex Parte Betts*, Judgment of Full Court of the Supreme Court of Queensland, O.S.C. No. 23 of 1985, 25 October 1985, Judgment of Kelly S.P.J., p. 2. See also *Beattie v Kindness, Ex Parte Beattie*, O.S.C. No. 22 of 1985.

17. *O'Sullivan v Lunon, Ex Parte O'Sullivan*, O.S.C. No. 14 of 1985, Judgment of Kelly S.P.J., p. 2.

18. *Ibid*, p. 6.

witness to those outside the group. It is to be expected that in relation to important political issues about which people feel moral outrage or concern, they will want to use the best and most usual form of expression and communication of that outrage or concern.

The United States Supreme Court has stated that

the right of the people peacefully to assemble for lawful purposes . . . is, and always has been, one of the attributes of citizenship under a free government. It 'derives its source' . . . 'from those laws whose authority is acknowledged by civilised man throughout the world'. It is found wherever civilization exists.¹⁹

It must be assumed that public protest will always be a possibility, and often an actuality, in a constitutional democracy. Thus the public assembly and political procession must be accorded recognized places in the constitutional machinery.

This is not to deny the value of the vote, the access to politicians, or the availability of a free press. The main issues about which people have demonstrated in Australia recently have been the subject of elections, parliamentary petition, and press coverage. But large numbers of individuals have wanted to do more in expressing their views. Usually they have been permitted, and should always be permitted, to do so provided they have not threatened the public peace or unduly inconvenienced others who might not feel the same concern or outrage or who might not share the same views. It is not a matter of balancing the right to protest over and against the need to preserve public order and the smooth flow of traffic. The recent Queensland experience proves conclusively that there is not an indirect proportionality between two measurable quantities yielding the simplistic formula that the "inalienable right to protest" results in a situation of lawlessness and unmitigated disruption to traffic and the lives of others; while the denial of the right to protest results in complete law and order, smooth traffic flow and the guarantee that people can go about their lawful business.

The state must make provision for public protest activity respecting such activity as a right or liberty of the subject while at the same time accommodating the exercise of this right or liberty within the confines of urbanised living dominated by the motor car, the market place and high-rise development.

There has to be regulation of public protest, not as censorship or political oppression but as the regulation of traffic; there has to be protection given to all citizens from threat of violence and disorder, not in a quest for quietism or elimination of political differences but so as to preserve the peace without which constitutional government and civilised living collapse.

Having accepted the place of public protest, it is necessary to make provision for its achievement under the law.

Accommodating Public Protest

In all Australian jurisdictions there are laws prohibiting breaches of the peace and like offences whether or not one is a member of a procession or assembly.

Persons who assemble with intent to commit a crime by open force or to carry out any common purpose in such manner as to give firm and courageous persons in the vicinity reasonable grounds to apprehend a breach of the peace are members of an unlawful assembly and that is an offence in all jurisdictions.²⁰ Riot or its equivalent is also an offence in each jurisdiction.²¹

19. *United States v Cruickshank* (1876) 92 U.S. 552.

20. See s.545C, *Crimes Act* (N.S.W.); s.62, *Criminal Code* (Q'ld); s.63, *Criminal Code* (W.A.); s.74, *Criminal Code* (Tas); s.6, *Public Order (Protection of Persons and Places) Act* 1971 (C'wlth); common law offence in Victoria and South Australia.

21. See s.5, *Unlawful Assemblies & Processions Act* 1958 (Vic); s.63, *Criminal Code* (Q'ld); s.244, *Criminal Law Consolidation Act* (S.A.); s.64, *Criminal Order (Protection of Persons & Property) Act* 1971 (C'wlth); common law offence, N.S.W.

No jurisdiction except Western Australia has laws generally governing public meetings held in public places; however most councils do have by-laws governing public meetings which are held on land controlled by councils. All jurisdictions have laws and policies affecting the holding of assemblies on roads.

While some Australian jurisdictions have adopted notification and consultation systems for policing public protest activity, Queensland has retained a permit system without provision for appeal to a court in the event of police refusal. The notification system with provision for a judicial hearing to determine conflicts when demonstration organisers and police cannot agree has been adopted successfully in some jurisdictions. It has worked well in South Australia for 14 years and in New South Wales for the last 7 years. This system encourages police-demonstrator co-operation, it recognizes the right to protest, and it provides the law's best machinery for resolving the competing claims of road users. Above all, it has preserved the peace.

If permit systems are to be maintained, the aggrieved applicant should be assured a right of appeal to a court.²² After all, it was Sir Joh Bjelke-Petersen himself defending the Queensland *Traffic Act* as it was prior to 1977, who said:²³

There is ample right of application to the courts provided in the legislation for those who feel that the District Superintendent of Traffic has treated them unfairly.

I would point out that in regulating processions, meetings, etc., the District Superintendent of Traffic, apart from ensuring the free and orderly movement of traffic, has also to organise such matters so that groups of persons who hold or are likely to hold conflicting views, whilst being able to freely express those views, are separated by time or locality.

Recent Queensland experience has demonstrated that police control of political protest with no provision for judicial review (except prerogative relief) results in periodic abuses of power in accordance with government policy. Inevitably, police independence and integrity have been impugned. Traffic control and the preservation of the peace can become very political business when demonstrators are protesting vehemently, though peaceably, against decisions of the government of the day. In quashing protest so as to maintain the peace, or to protect the rights of others, police can be seen to be and may become, the agents of government and its protectors during times of political controversy. Thus independence and integrity are essential if the public including the protesters are to have any trust in the police who have to perform the balancing of rights on the day, in the street. In exercising their traffic control powers in situations of potential political conflict, police may be given and often require directives from the government of the day. In so far as it is possible, the police should be spared the image of partisanship and should tread the narrow line between making political decisions themselves and blindly carrying out controversial government decisions.

The Need for Good Faith

Whether or not there be civil supervision of police decisions banning or restricting public protest, and whether or not there be a procedure stipulated by legislation for notification or application for permission regarding public protest activities, there must be consultation and good faith between police and protest organisers. Refusal by either party to consult jeopardises public peace; as does political conduct by either party which is calculated to impugn the public standing of the other party. Politicians, senior police, and protest organisers have a duty to provide accurate information to

22. This course has been adopted recently in Western Australia in the *Public Meetings and Processions Act* 1984.

23. Letter of J. Bjelke-Petersen to R. Wensley, 23 April 1969.

each other and the public so that there might be a right balancing of interests. The "disinformation" disseminated by the Queensland Government in the lead up to the Commonwealth Games undermined public confidence in the police as well as protesters' hopes of a fair go under the gaze of international T.V. crews.

In reply to the second reading debate on the *Commonwealth Games Act* in 1982, Mr Hinze who was then Queensland Minister for Police thought it necessary to retrace certain events that had occurred since the legislation was introduced. He referred to recent years including "allegations that a secret black army has been in training specifically to provoke violence in Brisbane during the Games."²⁴ Next day the Premier made a statement reported in the *Australian* alleging "that six Aborigines are presently in Libya undergoing guerilla and terrorist training."²⁵ Next day, the Leader of the Opposition asked Mr Hinze if he would table in Parliament the information received regarding the supposed training of Aborigines in terrorism in Libya. Mr Hinze declined but indicated that he had been presented with a document by the Police Commissioner. Being a responsible minister he conveyed the information to the Premier. He added: "It is his duty as Premier to convey the information which has international overtones, to the Prime Minister. That was done. As to tabling the document — if the Premier wishes to do that, he may do so; it is entirely up to him."²⁶ The document was never tabled.

A question was placed on notice about the matter in the Senate.²⁷ No answer was received for 6 weeks. The Minister for Foreign Affairs provided the answer: "I am advised that inquiries conducted by my Department and other relevant authorities have produced no evidence to verify that Aborigines are currently undergoing guerilla or terrorist training in Libya."²⁸ Next day Senator Baume, the Minister for Aboriginal Affairs, told the Senate: "I know of no evidence to support the assertions that Aborigines are training in Libya. That whole story is quite fanciful. I must say that those kind of statements will occur; people will say these kind of things from time to time. It may be that a Premier receives from one source or another information that may eventually prove to be false."²⁹

Meanwhile six weeks of disinformation by the highest level of Government had occurred. The information was seen to be a partial justification for the *Commonwealth Games Act*. This exercise by Government, assisted by a report from the Police Commissioner did nothing to guarantee preservation of the peace or the peaceful conduct of the Commonwealth Games. The price of such smear campaigns is too high for the state to pay. They place at risk not only the reputations of those who are smeared but also the fragile balance which can truly be called 'law and order', i.e. social order under the rule of law.

Keeping Out the Unwelcome, Unsympathetic Protesters

In recent years, the Anzac Day ceremonies in some metropolitan areas have been marked by conflict between groups called Women Against Rape in War and members of the R.S.L. and police authorities. Many Australians, including members of the R.S.L. see Anzac Day as

a national day of remembrance for the purpose of commemorating members of Australian armed forces and their auxiliary services who served Australia in the cause of freedom and who suffered death, injury or loss as a result of their service

24. 1982 QPD 4541; 9 March 1982.

25. *The Australian*, 11 March 1982.

26. 1982 QPD 4667; 11 March 1982.

27. 1982 CPD (Senate) 692; 11 March 1982.

28. 1982 CPD (Senate) 1335; 20 April 1982.

29. 1982 CPD (Senate) 1424; 21-22 April 1982.

as members of those forces in the course of armed conflicts in which those forces were engaged.³⁰

Other Australians, including the Women Against Rape in War, see the day as a commemoration of all, good and bad, that is associated with war in the hope that the national consciousness while treasuring those who died for freedom will tolerate the freedom to express horror about war and all that goes with it.

In the Australian Capital Territory, the Public Assemblies Ordinance became law prior to the 1982 Anzac Day procession. As well as adopting the notification system for ordinary processions, this Ordinance also created a new legal beast known as the "limited participation assembly" which could exist only on designated days, the main one of which is Anzac Day. The Ordinance allowed the organiser of a procession, for example the President of the R.S.L., to apply to the Police Commissioner to conduct a limited participation assembly on Anzac Day. The notification then had to be publicised and other persons or organisations could apply to the Commissioner to join the assembly. Under amendments made to the Ordinance in December 1982, those applications, if any, were to be forwarded by the Commissioner to the organiser allowing the organiser to object to any application. At the end of the day, the Commissioner was able to allow or object to a limited participation assembly and could allow or disallow others to join such an assembly. Any person aggrieved by any of these decisions could then apply to the Supreme Court for review of the decision.

The purpose of the Ordinance was explained by Senator Shirley Walters in these terms:³¹

We are trying in this place to avoid what happens overseas. Ten years ago there was never a thought in any Australian's mind that people would disrupt an Anzac Day march. Ten years ago thought was never given by any group to daring to march and upset the Anzac Day traditions. Times have changed. We now have radical groups which would like to march and upset the traditional Anzac Day service. I believe that it is the duty and responsibility of government to protect the right to march of people who fought in wars to protect our country.

The Ordinance was put to the test in the preparations for Anzac Day 1982. After the R.S.L. notified its intention to hold a limited participation assembly, several persons applied to the Commissioner on behalf of their organisations to join the assembly. According to the Police Commissioner, the applicants'

purpose was couched in similar terms to that advised by the Returned Services League of Australia and the Australian War Memorial, and, as I had no reason to believe that their presence in the Anzac Day March would be likely to lead to violence or serious breaches of public disorder or one of the other exceptions under the Ordinance, then I had no option under the terms of the Ordinance but to approve their participation. My adherence to the law aroused considerable controversy and received constant media coverage, despite the fact that those principally concerned were all very well aware of the legal position. As a result of these pressures, to many it would have seemed easy to have followed the dictates of tradition and reserve the Anzac Day March for serving members of the Armed Forces and ex-Service men and women. That easy option had not been selected by the legislature and it was therefore not open to me.³²

So the legislation in all its complexity, fairly applied, did not result in the guaranteed exclusion of those whom the organisers did not wish to have march with them. In the end, the Police Commissioner organised a round-table conference which resulted in the persons who wished to join the procession against the wishes of the

30. cl.4., Anzac Day Bill, Senate, No. 56 of 1983.

31. 1982 CPD (Senate) 1380; 21 April 1982.

32. Australian Federal Police, *Annual Report* 1981-2, p.4.

R.S.L. withdrawing their applications. The cumbersome and amended ordinance was repealed before Anzac Day 1983.

Senator Austin Lewis then introduced into the Senate a private Member's Bill. The Anzac Day Bill sought to achieve directly what the Ordinance could not achieve indirectly. It omitted the Police Commissioner from the application procedure and replaced him with the President of the R.S.L. who was to be empowered to grant or refuse permission to persons or groups of persons to participate in an Anzac Day observance. An aggrieved applicant would have been able to apply to the Federal Court for review of the President's decision. The bill was never passed; neither should it have been.

The Bill contained a procedure not designed to balance the competing claims of road-users, nor designed for the proper regulation of traffic nor designed for the preservation of the peace. All those considerations were to be overridden by a concern to restrict participation in observance to those approved by the R.S.L. Leaving aside considerations of the difficulty for police implementing the decision on the day in determining who is a member of an approved group and who is not, there is a more fundamental question to be addressed.

As a citizen, I would prefer to witness an Anzac Day observance in which the participants were only those whose predominant desire was to honour fallen comrades. If the time has come when there are citizens who, without breaching the peace and without causing unreasonable obstruction to others, wish to participate in the Anzac Day observance calling attention to other aspects of war or other aspects of other things, surely they should be able to exercise that freedom, the freedom for which those comrades died, but only to the extent that they do not interfere with the good conduct of the observance. I and many others might find their actions to be disrespectful, in bad taste, politically naive, or even politically sinister. But tolerance and freedom demand tolerating the intolerant and granting freedom to those who are so impelled by their message as to deny even the old and infirm fighters the opportunity once a year silently, respectfully and single-mindedly to honour their fallen comrades. I am suggesting that this social problem is not to be overcome by legal prohibition because such prohibition is practically unworkable and philosophically objectionable. You cannot legislate for loyalty, respect or love. To attempt to do so is to forfeit the freedom without which loyalty, love and respect cannot survive.

The behaviour of the "punk-anarchists" at the 1986 Melbourne Palm Sunday Peace Rally created problems for the Rally organisers similar to those encountered by the R.S.L. at recent Anzac Day Processions. The peace organisers were powerless to do anything except to ask the anarchists to respect the peace-loving disposition of the majority present. You cannot legislate for peace, neither can you exclude citizens from public activities unless there be grounds for suspecting their commitment to disruption amounting to breach of the peace. If the law maintains the peace and a balancing of rights, people in communication can come to accommodate each other and the community can manifest those virtues which thrive and are at risk in an atmosphere of freedom. If the spirit of Anzac Day or Palm Sunday has died it cannot be resurrected by legislation; if it lives, it will continue robustly and undefiled only in that atmosphere of freedom.

The Limited Right to Protest Publicly and Peacefully, Even if not Quietly and Quickly

In his Report of the Inquiry into the Red Lion Square Disorder, Lord Scarman said:³³

33. 1975 Cmnd 5915, para 5.

Amongst our fundamental human rights there are, without doubt, the rights of peaceful assembly and public protest and the right to public order and tranquility. Civilised living collapses — it is obvious — if public protest becomes violent protest or public order degenerates into the quietism imposed by successful oppression. But the problem is more complex than a choice between two extremes — one, a right to protest whenever and wherever you will and the other, a right to continuous calm upon our streets unruffled by the noise and obstructive pressure of the protesting procession. A balance has to be struck, a compromise found that will accommodate the exercise of the right to protest within a framework of public order which enables ordinary citizens, who are not protesting, to go about their business and pleasure without obstruction or inconvenience.

That balance can no longer be assured without the guarantee of individual rights; and the balance is a prerequisite for peace. The “general democratic right to protest against unwelcome political decisions”³⁴ must become a juristic right.

Recent Queensland experiments have shown that the executive can become little less than a god immune from political debate and legal challenge. Aristotle said: “The man who is isolated — who is unable to share in the benefits of political association, or has no need to share because he is already self-sufficient — is not part of the *polis* and must therefore be a beast or a god.”³⁵ In Queensland, that isolation has protected the executive and imperilled the citizenry. Legislative reforms providing the right to demonstrate, the proper exercise of police discretions, responsible actions by demonstrators, and the vigilance of the courts are required to humanize the god and save the beast. Needless violence, disorder and lack of communication between police and demonstrators must be avoided so that the thin blue line might be maintained intact and respected for the time it is needed.

34. *Campbell v Samuels* (1980) 23 SASR 389 at 393 (Zelling J).

35. Aristotle, *The Politics*, 1.2.14 (1253a).

PRESENTATION OF PAPER

Father Frank Brennan

I think I should start with a couple of disclaimers. I am from Queensland but I am now based in Victoria, and I may be a little out of touch with the Queensland situation now as my book *Too Much Order with Too Little law* dealt with issues up to and including 1982. Most of my dealings with lawyers nowadays are more to do with the issue of aboriginal land rights. The second disclaimer is that I may now be a little out of touch with law and order which is obviously becoming an academic discipline as I read in Mark Findlay's paper that to some extent to talk of policing public order as anything but a "pro-active phenomenon" is simplistic and misleading. I must confess that even if I fell over a pro-active phenomenon I would not be aware that I had done so. There may be much in my paper which is simplistic and misleading, and for that I apologise. But confining myself to the Queensland experience I will draw a few conclusions giving a couple of quotations from the paper and also a couple of other examples.

Yesterday marked the passing of a decade since an event in Queensland which led to the resignation of the Police Commissioner, Mr Ray Whitrod, and the inevitable further radical politicisation of the Queensland Police Force making it less equipped to deal with the law and order situations as we saw during the street march ban from 1977 to '79; as we saw during the Commonwealth Games in 1982; and as we have seen recently during the SEQEB power dispute in that state.

The matter can be summed up fairly well by comparing statements made by the Queensland Premier, Mr Joh Bjelke-Peterson (as he then was), when he first came to power when he pointed out that in Queensland things had been relatively free and easy in relation to law and order. Some years later, in fact, the Queensland police said they had been spared the sorts of problems that arose in New South Wales and Victoria.

On the 29th July, 1976, there was a major demonstration by university students campaigning against the Federal Government to increase TEAS allowances. That night on national television there was shown the beating of a woman demonstrator by an identifiable Queensland police officer who performed the action with a baton. The Police Commissioner at the time, Mr Whitrod, announced duly that there would be an investigation. He sent the prescribed memo to the Police Minister, set up the inquiry in relation to the event, there having been a complaint made by the University Union Chairman at the time and the then Vice-Chancellor, who happened to be none other than Sir Zelman Cowan. Two days later the Queensland Cabinet met and announced that such an inquiry would not be held and that left the Police Commissioner and the Minister to comply. Within a few months the Police Commissioner resigned. A new Police Commissioner was appointed, and under the new Police Commissioner, Sir Terence Lewis (as he then was not), the police officer who had actually performed the bashing was then promoted. That sort of vignette simply illustrates the politicisation of the force which has occurred in relation to the implementing of law and order and as I have shown in the paper commencing at page 12 the situation can be summed up by looking simply at the Police Reports that come out each year.

Prior to the institution of the march ban in September 1977 the new Police Commissioner, Mr Terence Lewis said; "Public behaviour in the streets, during the year under review has been generally good throughout the State", and in the last paragraph of that quotation; "Widespread demonstrations which unfortunately followed His Excellency the Governor-General throughout Australia also were experienced in Queensland. These demonstrations, however, did not attract the numerical support or violence which attended other demonstrations outside this state." So I go on to argue that in relation to the march ban there was no great law and order problem in Queensland. Even the Queensland police perceived the issue to be one of far less concern than in southern states at that time. But, because the

Queensland government had decided that they wanted to ensure that Queensland would be kept as an available port for the export of uranium come what may, it was decided that the Campaign Against Nuclear Power would never be issued with permits for public processions.

At that time the law in Queensland provided that a permit had to be issued for each procession. If a permit was refused then there was an appeal to a magistrate. The only legislative change made by the Queensland Parliament in 1977 was the retrospective abolition of the right of an appeal to a magistrate. The only applications pending at that time were by the Campaign Against Nuclear Power.

Coincidentally that retrospective withdrawal of the right of appeal guaranteed two things. It guaranteed that in future no permits would be issued. This would require that police wrongly exercise their discretion, presuming that they had rightly exercised it before the institution of the ban, and presuming that they had rightly exercised it after 1979. It also ensured that there would be minimal interference by the courts in the abuse of the exercise of that discretion.

I have argued that the ban was not only morally objectionable but that it was also stupid by once again quoting the Annual Police Reports following upon the ban in 1979. You will note on page 12 I quote the 1979 Report that says that once the ban was lifted there were only three incidents of any significance which had occurred during the previous year. In 1981 things improved, we are told; "There was a continuing marked improvement in public behaviour during the year," we are told that; "The level of public demonstrations for various causes has eased, and those that were held did not require police involvement other than in normal crowd or traffic control." We are told again in 1982 that; "There was a continuing marked improvement in public behaviour during the year." So you see Queenslanders kept getting better and better at behaving once the march ban had been lifted and once public protest was once again permitted. So that Queensland police having abandoned the government policy of all out confrontation did in time return to a policy of consultation and cooperation.

There was then a temporary aberration during the currency of the Commonwealth Games but in an indicative Queensland attitude the Queensland Police Annual Report of 1983 traces that to the state of origin of most the protesters pointing out that those who were campaigning for land rights were accompanied by people from southern states to swell the ranks of protesters. Basically when the southerners stay at home, there is no problem with law and order once the march ban has been lifted.

The 1984 Report states that; "instances of abuse and unpleasantness towards police officers performing their normal duties are less prevalent today than in years past", and goes on to point out that; "Despite the more sympathetic approach by police officers to crowd control and the desire to work and play in close harmony with the community," there are some problems but not in relation to law and order and the policing of public protest.

From that I conclude that even if you looked simply to the evidence given by the Queensland police themselves, there is nothing in it for them in having a street march ban, there is nothing in it for them in viewing the control of public protest as being something that requires the stopping of all political protest so as to maintain law and order.

I then go on and deal with the repression which has occurred with the SEQB disputes and point out there the courts have become a little more rigorous in the application of the law than they were during the street march ban. But even the Queensland Supreme Court I might say, with respect, has still shown some willingness to simply see the government policy implemented without a rigorous implementation of the law though in relation to the most recent case where that has arisen the High Court has recently granted special leave to appeal and we are awaiting the judgment in that case.

I will not address the importance of public protest; I assume that you are all readily convinced of that and the need for its accommodation. You are more familiar than I with the benefits of the notification procedure. Queensland has a permit procedure. I have argued that if you are going to have a permit procedure rather than a notification procedure, you need an adequate facility for review by the courts given that there will be abuse of the permit issuing power.

I then go on after page 17 and point out that no matter which sort of system you have there is a need for good faith, particularly by government, in relation to consultation and in determining applications for processions particularly in highly charged political circumstances.

I quote one instance there from the Commonwealth Games where Mr Hinze had purportedly given a Report by Mr Lewis to the Queensland Parliament in the lead up to the Commonwealth Games saying that there was evidence that six aborigines were presently in Libya undergoing guerilla and terrorist training. That was given as a justification for the new Commonwealth Games legislation which was introduced. Questions were put on notice in the Federal Parliament to the then Minister of Foreign Affairs, Mr Peacock. Those questions were not answered for six weeks whereupon the defamation of aborigines had already occurred, and then Mr Peacock answered; "I am advised that inquiries conducted by my Department and other relevant authorities produce no evidence to verify that Aborigines are currently undergoing guerilla or terrorist training in Libya". Senator Baume, then Minister for Aboriginal Affairs, said that the whole story was quite fanciful. This exercise by government assisted by a Report from the Police Commissioner did nothing to guarantee preservation of the peace or the peaceful conduct of the Commonwealth Games. The price of such smear campaigns is too high a price for the state to pay. They place at risk not only the reputations of those are smeared but also the fragile balance which can truly be called law and order that is social order under the rule of law.

On page 18 I deal with the problem of trying to accommodate protesters of a different political complexion from those who have got the running and the focus with the media. This has arisen with Women Against Rape in War at Anzac Day processions, and recently with the anarchists in the Palm Sunday procession in Melbourne. If the law maintains the peace and the balancing of rights, people in communication can come to accommodate each other and the community can manifest those virtues which thrive and are at risk in an atmosphere of freedom. I do not see any place for police determining which political group is to have the running provided that all political groups who are so involved are committed to preserving the peace.

By way of conclusion I say that policing public order is made more difficult for police and less effective from the Queensland experience when any of the following conditions occur:

1. When government uses the police force in law and order situations for its own political advantage.
2. When police and the courts fail to distinguish political activism and opposition to government policy from unlawful activity.
3. When demonstration organisers and police refuse to consult.
4. When government shows no good faith.
5. When government abuses parliamentary privilege and its position to stigmatise individual citizens.
6. When police are expected or try to discriminate between peaceful protesters who hold conflicting views even if one group be riding on the coat tails of others in the quest for media attention, and finally
7. When courts fail to bring their customary rigour to the assessment of evidence and legal arguments given a large number of defendants charged with the same

offences, arising out of the same event, and given government's keenness for convictions.

From the Queensland experience I would say there is still a need for legislative reform in states such as Queensland; The proper exercise of police discretions, responsible actions by demonstrators, and the vigilance of the courts. Needless violence, disorder and lack of communication between police and demonstrators must be avoided so that the thin blue line might be maintained intact and respected for the times that it is needed.

THE CRISIS OF POLICING PUBLIC DISORDER

*Mark Findlay**

Fellow in Justice Administration, Mitchell College,
Consultant Criminologist, Bureau of Crime
Statistics & Research

While accepting that incidents of public disorder are not self-evident, unambiguous empirical realities, this paper will not debate whether this State faces a crisis of public order, nor will it discuss the socio-political factors responsible for defining and translating the image of such a crisis. As the title suggests I am concerned to expose the radicalization of the policing function which is represented as arising in response to such a crisis. In short I wish to turn the discussion of the public order crisis on its head by analysing the state's response to a stereotypical social "menace". But more than this the paper will identify the role of "policing forces" in the construction of and the justification for this radical response.

The involvement of police agencies at all stages of a public disorder situation needs to be analysed as a dynamic process. A situation such as a riot is deemed threatening because of the fluid and unpredictable nature of the collective behaviour which constitutes it. The influence of police intervention into such collective behaviour cannot be appreciated in a sectional or static sense. The police so often become the focus of a riot, and their responses to public hostility directed against them will essentially effect the development of that hostility against them will essentially effect the development of that hostility as much as it does the re-establishing of civil order.

In addition, by being responsible for constructing the official account of public disorder, policing agencies determine for the public what was the reality of the "menace", and what should be therefore the appropriate control response in the future.

Bearing this in mind, this paper will concern itself with the police "response" to public disorder both within the framework of the disorder itself, and more broadly as a part of the definitional process which follows. The specifics of police practice and its consequences will primarily be examined against the backdrop of public disorder which has arisen over the years at the Easter motorcycle races at Bathurst.

The most important aspect of the police/public order equation to be addressed is that of the functional significance of the public order "menace", for the radicalization of policing control strategies. This will be examined at two levels; the specific developments in tactical response policing, special court procedures and emergency custodial control, and more generally the institutionalization of these unique responses to a particular threat through increased structural legitimacy and wider application. In order to adequately understand the latter level it will be necessary to engage in the following process; to examine the construction, interpretation and translation of the social menace by various policing agencies, to contrast the theoretical and functional understanding of the phenomenon, to analyse the role and function which policing agencies carve out for themselves in order to control this phenomenon (and the mechanisms which they choose for this purpose), to highlight the inconsistencies which arise between the definitions of the object of control and the unique control mechanisms, and finally to comment on the expansion of influence for such tactical response mechanisms across a wider range of more neutral social order concerns.

* This paper would not have been possible, in its present form, without the invaluable data on charge patterns, and the discussion regarding the historical development of policing Bathurst, and the special courts, prepared by Chris Cunneen.

1. For the purposes of this paper "policing" will encompass those activities of the police, the courts and the custodial services which are directed towards the immediate control of public behaviour.

As a general rule policing agencies tend to simplify and stereotype a public disorder social menace. They tend to reduce the nature and complexity of its existence and operations into terms which would merit a simple ideological response.

However having so constructed the reality of their interests and the form that their reaction will take, policing agencies seem drawn to compromise the more traditional aims and objectives of police practice and of the ideology of justice as a whole. In so doing there develops a real potential to distort the justice "machine" while at the same time to neutralize and depoliticize the meaning of the public behaviour in which the police become involved.

It will now be obvious that I see discussion of policing public order as providing a particularly appropriate opportunity to comment on the criminal justice process in transition. In this respect I am interested in the initial alteration of the criminal sanction, the restructure or re-emphasis of the protections supposedly offered by the "rule of law", the fundamental expansion of police and court powers, the status of the executive in the process of distortion, the relationship between traditional crime control concerns and more marginal notions of state security, and the overreach of the criminal law.

Without the macro approach to the redefinition of criminal justice which arises out of the social "menace"/distortion nexus, the ramifications of such institutional developments as tactical response policing cannot be seen for what they are.

Policing Public Disorder

There is nothing new about collective confrontations between police and sections of the public. The beginnings of modern policing were intimately linked to the perceived public order problems of a bourgeois urban society (Silver, 1967; Irving and Connell, 1980).

They were further connected to the regulation and control of the formerly free, mobile and potentially recalcitrant and disruptive labouring poor who from the late 18th century (in the U.K.) flocked to the cities, often bringing with them a popular culture, leisure activities, sports, etc. which was wholly antithetical to the requirements of an urban factory civilization.

(Hogg, 1984b; also see Donagrodski, 1977).

The history of resistance to the presence and moralizing efforts of the police in a public space, has, in N.S.W., been more diverse than a class, age or gender struggle. An examination of larrikanism in the late 19th, early 20th centuries reveals a police reaction not so much to criminal behaviour but rather to a blatant non observation of norms of public propriety. In this regard the police have embraced the function of determining the meaning of order and assimilating its projection into the very fabric of proper police function, so that a challenge to public order so defined is viewed as a direct challenge to the police. Disorderly behaviour is interpreted as equating to disrespect for the police. Naturally then the police accept that they should become the focus of public resistance within situations of disorder, both in a practical and symbolic sense. In fact in certain situations they adopt a profile which will necessarily cause this to come about. Because of this almost inevitable consequence of police responsibility, to become the focus of public disorder, police reactions to and interpretations of such disorder are characterised by an urgent commitment to meet force with force and emerge the victor. The language of police response is militaristic, the fear of the menace is personally felt and immediately the jettisoning of traditional "consensual constraints" on police power is unabashed.

An example of this reaction can be seen in the New South Wales *Police News* (April 1980), (some twelve months before the establishment of the tactical response group). An article entitled 'Police at the Cross Roads', argued for sweeping changes to police riot control practice in the following manner; "It is an accepted fact of life that

police forces throughout the world are becoming a 'battle force' thrown into hold the defences against civil insurrection, urban terrorism and industrial anarchy." The article advocated the view of a senior British police officer who stated that the only option for police was to move away from traditional policing towards a "fast responsive service . . . backed by the resources of modern technology" (See Cunneen, 1985:70).

One would appreciate that the nature and significance of a challenge to police authority (in the form of public disorder) is therefore crucial to a policing response to such a challenge. It has been noted that one of the principal determinants of both how police exercise their "public order" discretion, and when they choose to resort to force, is the attitude or demeanour of those who present the challenge toward the police (Travis, 1983). In circumstances of collective public disorder it is so often not only police concepts of order which are disrupted, but it is the police agencies who become the immediate community which is threatened by such disorder. Police authority becomes the goal to be reaffirmed as much as a more general push to re-establish public order.

The Bathurst Easter Weekend Motor Cycle races may be taken as a unique example of this phenomenon. There are several large bike race meetings in different parts of the state of N.S.W. each year. Little or no problems seem to arise in the policing of these other events. It is arguable that what has occurred at Bathurst in recent years is that the event has become invested with a particular symbolic significance. It has become a test for both, the bike-riding fraternity (or a section of it) and the police (but especially the latter) of the legitimacy of the police presence and public authority at the event. In recent years the public response and media coverage has consistently dwelt upon the policing of the event as a test of police strength and tactics regardless of whether or not on the particular occasion in question there has been any trouble. In a very real sense the police have chosen to make the event a test of their strength, of their ability to establish their authority, regardless of the consequences; albeit that the media-induced aura surrounding the races does place pressure upon them in this direction. The police presence and displays of strength and toughness that this symbolic challenge requires, is always likely to engender a corresponding resistance on the part of some bike-riders. And of course they become every bit as sensitive and expectant with regard to police behaviour, and what they perceive as victimisation, as the police are with regard to "bikie" behaviour. It is strongly arguable that a purely technical — professional response which sees the disorder as separate from, and unrelated to, the policing of the event and hence as warranting more police and better technical preparation more equipment, etc —merely fuels antagonism and ensures the future escalation of conflict. (Hogg, 1984b).

Even the nature of the disorderly behaviour (the "doughnuts", "burn outs", "bull rings", incendiary game play, etc.) which has been a precursor to the Saturday evening "riots" of recent years at Mt Panorama (Bathurst) is so structured as to represent a symbolic rejection of usual motor traffic regulations, conventional team sport, and restrained consumption of intoxicants.

Ignoring questions of temporal sequence, both the nature of the disorder and the policing activities to re-assert authority are inextricably linked in substance and symbol.

Finally one must consider the factors which predispose police agencies to turn their attention to certain types of public disorder rather than others. As stated earlier the police have a tendency to stereotype as a means of categorizing the potentially dangerous and unpredictable. The nature of their job, peer group solidarity and their sense of isolation from the community and the rest of the justice process, contributes to the formation of attitudes by the police, about law and order, which will indicate how

such stereotypes are constructed. All this makes for a mutually reinforcing process of meaning construction through which particular types of public disorder will form the object of an adverse exercise of police discretion. Moreover the police need to legitimate their decisions (for themselves and others), particularly decisions to use force, means that they must see themselves as representing (and acting on) the socio-consensual "silent majority" view of public order. They will represent their practices as waged against evil, disruptive and pathological elements in society, seeing themselves as indeed the "thin blue line" between order and chaos.² This process of meaning construction not only simplifies complex social phenomenon and helps legitimate police behaviour but it also neutralises the socio-political significance of the public disturbance, and the reasons for choosing to meet it with a certain sort of police reaction. The norms being enforced are absolute from the point of view of the enforcers. In turn aspirations of the disorderly group, when it comes to the use of certain public space, are not accorded any legitimacy or credence. Even the cohesion of their common pursuit is disregarded by according responsibility to the "small group of troublemakers".

This is a process whereby fundamental and complex particular social issues are translated into simple "law and order" problems, and the need to deal with the underlying causes of such issues is ignored in preference for a discussion of containment through legal and policing strategies rather than tolerance and/or social reform (Benyon, 1984) "It is not surprising that this process often culminates in collective confrontations with the most immediate and visible instrument of the policy of containment, the police themselves" (Hogg, 1984b) and that these confrontations are so simply constructed as the generic event of riot.

The traditional concept of a riot as an isolated and spontaneous outbreak of individual and collective pathology warranting a single classification and mode of interpretation, circumscribes the field of analysis when it comes to a consideration of police practice (as it does dictate what is considered to be a legitimate policing response).

If however one examines the peculiar social, political, economic and cultural perspectives of a "riot" situation, the possibility of realistically reconnecting these with particular dimensions of a policing response, will be possible.

To illustrate this point I will concentrate the analysis of this section, on the policing practice which has developed as an attempt to control public behaviour associated with the Bathurst Easter Motorcycle Races.

Policing Bathurst — A Brief History

The behaviour of youth seen to be in need of control over the Easter weekend at Bathurst was, prior to the 1960s, rarely directed against the police. Perhaps as a result of this the police response to crowd behaviour was apparently more concerned with road safety and public sobriety, than macro questions of public order and crowd control. In saying this one must not dismiss the significant secondary potential of the laws regulating motor traffic and intoxication, for the control of public behaviour (Cunneen & Findlay, 1986).

The disturbances at Bathurst themselves were not, prior to this time, represented by the media nationally and recognised by the police as a significant "problem" of public order. Concern about this issue was localised and seen as the responsibility of the council, race organisers, bike riding associations, the local police and business interests. Was this because the behaviour was less threatening as a broad social

2. Following the 1983 Bathurst "riot" the N.S.W. *Police News* congratulated those police who held the thin blue line during the Battle of Bathurst". (N.S.W. *Police News* April, 1983 p. 3, 5)

menace? As I shall suggest later in this paper if one looks at certain years in the '50s and the '60s the arrest figures, estimates of property damage, etc, would not necessarily support this conclusion. Chris Cunneen's detailed analyses of the history of the Bathurst "riots" clearly indicates that the nature of the media response and police reaction to these examples of public disorder are more likely to be influenced by certain social and political sensibilities which prevailed at the time, than they will be by the particular reality of the event (Cunneen, 1986).

In the 1950s the highways in and out of Bathurst and certain roads within the city itself were patrolled by officers of the N.S.W. Public Safety Bureau. In 1956 police were first stationed on Mount Panorama itself to control motor traffic behaviour. It was evident that displays of riding techniques by members of the crowd, would invite police attention (*NSW Motorcyclist*, 16/3/56:6).

In the later part of the 1950s it was usual for around 40 police to be on duty at Bathurst over the Easter weekend. Half of these would have been reinforcements from Sydney and about a dozen were from the Public Safety Bureau. Although the general perception amongst the bike riding community of police harrassment of motorcyclists may have existed during the 1950s, there is no evidence to suggest that Bathurst had taken on its present symbolic status as a theatre for motorcyclist/police confrontation.

During the early 1960s there developed a new dimension to the Easter disorder at Bathurst, in the form of violent clashes between youthful spectators and the police. This pattern of violence was to become institutionalised during this decade and as Cunneen observes "dimensions of the pattern revolve around the conflict over public space, resistance and aggression towards police and the participation of young working class men" (Cunneen, 1986). It is also the first time that the media or the police refer to the behaviour as a "riot".

The pattern of public disorder at Bathurst during the 60s was fairly sporadic, spontaneous and town centred. For example:

The trouble in 1960 started around 7.30pm on the Saturday night as hundreds of youths congregated around the end of the park opposite the hotel. Some were throwing firecrackers at traffic and passers-by. Two police attempted to arrest two of the youths but were surrounded by scores of other youths, some of whom began throwing firecrackers at the police. The original two apprehended slipped away. Police reinforcements arrived, some ferried by taxi from the police station. Beyond the immediate crowd of three hundred youths, police estimated several hundred more onlookers were attracted to the disturbance. The crowd was dispersed by a total of twenty police. The disturbance lasted approximately half an hour and reached its peak when those arrested were placed in the police truck. Ten arrests were made. These included eighteen, twenty and twenty-two year old labourers, an eighteen year old panelbeater, an eighteen year old clerk, a nineteen year old railway porter, a twenty year old fitter and twenty year old electrician. None of the defendants appeared at the later court hearing and all forfeited their 5 pound bail. (Cunneen 1986).

The 60s also saw the development of the "troublemakers" hypothesis which complemented the standard policy tactics of stereotyping and neutralization. The stereotype allows police to tailor their response so as to justify selective policing in such a way as to reduce the criticism that such techniques are in fact evidence of discrimination. In addition it neutralises as invalid or subversive the justification presented by those involved in civil disorder. In fact it can magnify the significance of the opposition as a by-product and therefore further legitimise the potential of the police to it. Finally attributing the organisation and perpetuation of the conflict to "ringleaders" shifts responsibility for it away from the formal control agencies, on to the few ringleaders.

The controlling agencies then are viewed as either victims of mob reaction, or neutral enforcers of a consensus notion of law and order. Stereotyping therefore is not

only significant for the interpretation of collective behaviour, but also effects the control strategies devised in response to it.

In the years which followed the confrontation in 1960 police methods were more concentrated, co-ordinated and aggressive (*see* section on **Arrests**) and this may have accounted to some extent for the apparent calm. Even so anti police feeling was not dissipated. The police took to intensive patrolling by uniformed and plain clothes officers, breaking up groups of youths in the main streets, parks, and outside certain hotels within the town. The foot and vehicle patrols were augmented by the introduction of two way radio co-ordination. Although the total number of police on duty in Bathurst over these weekends, was similar to 1960, their deployment in saturation style patrols around the town was new.

Attempts by police to disperse crowds of young spectators, as a part of the order maintenance strategy was bound to conflict with certain central characteristics of the whole Bathurst Easter Weekend leisure event, which were recognised as attractive to a significant proportion of visitors. The Saturday afternoon and evening congregation of young people in the town (as was then the practice) was as much a part of the leisure activity in going to Bathurst, as watching the races. Associated with this was the consumption of liquor in public view, and the presentation and admiration of motorbike machinery and riding prowess. However the activities of young people in groups without what the police saw as apparent reason was deemed by the police to be threatening in its potential to become disorderly. What ensued in these years (as has been the case more recently on the mountain itself) was a colonisation, contestation and negotiation over what was acceptable public behaviour and who should have access to certain public space.

Both the press and the police were sensitised by events of disorder interstate and overseas in 1964; so much so that it was the first time that the national media in Australia picked up on the youth "problem" at Bathurst. It was the hostile crowd which congregated outside the Bathurst Police Station on the Saturday night and the rumoured vandalising of the city's parks and gardens which formed the basis of the "moral panic" reporting which ensued. By this time the police/biker conflict could be represented as traditional. The stereotype rioter was also well established. Yet the actual "law and order" contest that year does not seem to merit the abnormally "dangerous" representation it received. There was a record number of visitors to the town. There was some media comment about the extent of alcohol consumption. The congregation of youths yelling abuse outside the police station had occurred before. When the police emerged to make two arrests, many of the youths dispersed. Police vehicles that had been out on patrol were called back to the station. Then a big sweep was made through Bathurst streets and parks where another 35 persons were arrested. Even the nature of the charges and the type of person charged were not greatly dissimilar to previous years.

Yet the response to the disturbances of 1964 and 1965 were consistent with the law and order (crisis policing) themes promoted by the state within the wider political framework at the time, and the pressure over the decline in police strength.

The 1964 riot had been so particularised through association that it is not surprising that 1965 was reported as more of the same. Yet once again when one analyses the petty vandalism, outlandish game play and open shows of disrespect for police, there seems little to single out the events of this year as what the *Sun* called a "vandal orgy" (19/4/65) what the *Mirror* quoted one police officer as saying "It was total war" (19/4/65).

It is not surprising to discover that following the "trouble", in the two previous years, the police presence in 1966 during the Easter weekend in Bathurst was almost double that on duty in 1964. Of greater significance was the presence of 21 division amongst these police. 21 division was a police mobile unit established to deal with investigating and controlling a variety of public disturbances which usually centred on

hotels, and were as a consequence, drink related. It was also seen as a training ground for detective investigation practice.

It seems somewhat more than co-incidence that the arrest figures for that year were over three times that of the previous year, and where information was available, officers of 21 division were responsible for two thirds of those arrests.

The involvement of 21 division in crowd control at Bathurst was to be significant. In fact for the period 1961-1984 of known cases 21 division officers arrested 85% of persons who appeared before the court for offences related to the Easter weekend.³

When one examines the data on offence location, 1966 was also an interesting year from a policing point of view. This was the last year when almost all arrests were made in the town area. Also it is a year which saw a diversification of offence location.

For the remainder of the decade arrest figures remained high when compared to previous years, although despite a notable jump in police manpower in 1969, the arrest rates slowly declined. Despite reports of anti police activity there was no further reporting of "riots" at Bathurst until 1972. Yet even in that year arrest figures did not increase significantly. By 1974 police levels were remaining fairly constant and the arrest rate had dropped below the pre 1960 figure.

Perhaps the most notable change in offence patterns during the 1960/70 transition was the change in offence location. This becomes important when one appreciates that the recent focus for confrontation has been the police compound on Mount Panorama. In 1967 over 50% of arrests were made on the Mount, whereas in the previous years the figure was less than 3% and by far the majority of arrests were made around the town centre. Although the relative percentages fluctuated during the 70s, by the end of the decade, the Mount had clearly established itself as the arena for conflict. Why this shift occurred and why police strategies altered in terms of location will be discussed later. At this stage however it is worth recognising that after the aggressive policing by 21 division in the parks and hotels in Bathurst township in 1966 (where 94% of individuals were arrested) it seems that the campers chose to confine their drinking and carousing the following year to the Mountain. It was at this location in 1967 that more than half the recorded arrests were made in that year. It appears that these arrests were effected primarily by officers of 21 division. It was not until the end of the 60s that a field control unit (caravan) established a 24 hour police presence on the mountain over the Easter Weekend. In the early years of its operation it was manned by a sergeant and two general duties constables.

Following the Easter clash in 1976 the Sydney press carried reports of how 20 officers at the mobile police station (on Mount Panorama) prepared for the worst when "beseiged by more than 200 screaming, club wielding bikies" (*Mirror* 20/4/76). The riot in Reid Park was said to involve 30 police officers trading punches with over 100 "troublemakers" and the *Western Advocate* quoted police sources as saying that it was the "wildest incident ever witnessed" since the introduction of the races to the Mount some forty years previous. (*Western Advocate* 19/4/76). Correspondingly the arrest figures were almost twice that for the previous year (which in turn were three times higher than 1974).

In 1975 and 1976 the Drug Squad had a presence at the race meeting but were not very active in terms of arrests. In 1978 and 1980 they raised their profile as did 21 division in 1979, which was their last year of operation at the races.

Nineteen seventy seven saw the initial push by police for an upgrading of facilities on Mount Panorama which would be conducive to more effective policing. The suggestion at this time was for the provision of lights in the camping area, which was

3. This percentage may be somewhat inflated due to the large number of arrests where the identity of the arresting officer's division is unknown. It would be fair to presume that a significant proportion of unknowns would be general duties police.

seen as having the potential to reduce the amount of violence after dark (*Western Advocate* 12/4/77).

Random firearms and weapons checks were carried out by police during the Easter Weekend of 1978. The police presence was the highest on record (392) even outstripping the "saturation" numbers of 1986. (*S.M.H.* 24/3/78). The media made much of the "arsenal of weapons" recovered by police as a result of these checks (*Sun Herald* 26/3/78).

The concept of a "compound" on the mountain was a reality in 1979 when the mobile police unit was enclosed by wire fencing. By 1980 the permanent police station on the Mount was operational. From this time on, the conflict/arrest pattern was clearly located on the Mount and around the compound. From 1981 the "riot each alternate year" pattern seemed evident with the origins, nature, focus and development of the conflict becoming fairly predictable. Only the size of the compound, and the technology of police control strategies seemed to expand.

Three Case Studies of "policing the Spectacle"

From 1984-86 a detailed observation study of the evolution of violence at the Bathurst bike races, was carried out by a team from the Centre for Studies in Justice⁴.

As part of this research, police planning, strategies, operational objectives, behaviour and their construction of meanings were noted and recorded. A fortunate co-incidence was the fact that each of the three years provided respective examples of a "non riot" situation without major intervention, a "riot" situation with intervention and a "non riot" situation with saturation intervention. As a precursor to a general discussion of policing strategies it would be useful to describe in summary the involvement of the police on Easter Saturday in each of these three years.

- (i) **1984.** Some 230 police officers were barracked at St Stanislaus College and these were supported by 70 highway patrol policemen. Over eighty officers were trained to serve as part of the Tactical Response Group (See later section on the TRG for a fuller discussion of their operation pp 40-44 and 51-52.)

From mid afternoon there were no more than half a dozen uniformed general duties police at the opened gates of the police compound. By 5.00 p.m. on the approach road to the right and left of the police compound bike riders were engaged in "burn outs", "doughnuts", "drag races" and other public shows of riding skill.

At around 7.00 p.m. in the evening several small groups of uniformed general duties officers (in 3's and 4's) were standing in the area between the compound gates and the toilet block. The bike riders and spectators were now forming into rings, to engage in cock fighting, incendiary games and the usual bike riding displays. It had started to rain by 7.30 p.m. The crowd of spectators outside the compound had grown to about 200 people. The police strength had reached about two dozen officers, who were also outside the compound. As the crowd grew and encircled the northern and southern fences of the compound the police returned to the gate area and inside the fence.

At 8.00 p.m. the crowd's attention was drawn to the burnt out shell of a motorbike which was dragged up to the front of the compound. Certain members of the crowd shouted anti police slogans and attempted to encourage some collective activity against the compound. The police moved out into the crowd to arrest a young man who appeared to attempt to climb onto the roof of the toilet block, carrying a can of beer. After further chanting the bike "shell" was removed.

4. For a detailed account of the methods employed and findings of the study see, Cunneen (*et al*) (1986) "Working Papers on the Violence at the Bathurst Bike Races", unpublished

A short time later more than a dozen small groups of uniformed police re-emerged into the area between the gates of the compound and the toilet block. They engaged in (or were engaged in) conversation with spectators who appeared to be in varying states of inebriation. The conversations seemed to quieten some of the pre-existing tension, and were friendly and amicable, if rather colourful at times. By 8.30 p.m. the police presence had increased to more than two dozen officers outside the fence and perhaps more than 20 inside the compound perimeter.

It took more than an hour after recommencement of the "conversation strategy" for the first "burning toilet rolls" to be thrown into the compound. However these appeared to have been as the result of an "overthrow" from a nearby biker "game".

Around 10.00 p.m. a number of burning toilet rolls were thrown into the compound and several bottles and beer cans were hurled at the fence. One of these hit a police officer on the head. However the police response was restrained and they simply moved forward another dozen officers into the crowd.

For the rest of the evening the small group intervention style of policing prevailed. Despite the occasional outbursts of abuse against the police and localised examples of missile throwing, the crowd response to this police intervention was positive and involved.

The groundwork for a productive dialogue between the crowd and the police was established earlier that afternoon by strategies such as the superintendent in charge of the operation and other senior officers walking throughout the camping area and discussing intended cordial relations with the spectators. On such occasions the superintendent indicated that random breath-testing checks would not be mounted on the approach road to the mountain on the Saturday evening provided that bike riders' behaviour on such roads was not obviously at variance with motor traffic regulations.

The policing operation, unlike previous years rested on a conscious attempt at constructive communication between the police and the bikers. To facilitate this the appearance and profile of the police on the mountain deliberately concentrated on the "normal" (eg.) the use of uniformed general duties police officers, the removal of the TRG from public view on the mountain, and the minimal use of R.B.T. patrols on the approach road to the mountain.

(ii) **1985** Police strength this year was slightly larger than the previous year.

Both on Friday and early Saturday the police had established checkpoints ostensibly under the R.B.T. programme, at which they were also checking on identification and in certain instances were carrying out random searches of luggage.

The police briefing prior to the Easter weekend had been (as was the case in 1984) a low key affair at which the emphasis was on non-intervention. However the prominent role of the area superintendent and the superintendent in charge of the TRG may have been taken as indicating a firmness of resolve as a "second string" approach.

The official view-point as expounded by the superintendent and other senior officers was that the policing programme would be low key and in effect things would go well. When one asked the same question of police at a lower rank level or from a specific squad such as the TRG it was their view that there was a high potential for violence that evening, because of a number of different factors. It is also worth noting that while we had clear evidence that a variety of highway patrol vehicles had been set up to stop and check licenses, the official police line was that this practice was not taking place and no senior officer knew where or how or who was carrying out these checks. This seemed

extraordinary when one realised that such random checking was going on in a number of different localities around Bathurst.

The crowd in the afternoon and early evening of Easter Saturday seemed to be different from that in 1984. There appeared to be a greater number of "weekend bikers" and town people on the mountain, and a large number of spectators appeared to be more obviously effected by intoxicants at an earlier stage of the afternoon.

At 6.30 p.m. I spoke to senior officers at the compound and gained the impression that things would be quiet that evening. The numbers around the police compound in terms of spectators were no more than a hundred at this stage. Police officers were mainly in the compound and there were no more than about 10 or 15 by the wire mesh gate. The senior officers indicated that the police would not take any interest in incidents such as bike burnings. As we stood there talking in fact, a bike was burnt to the west of the compound and it seemed to attract no police interest.

The amount of bike rider activity such as "doughnuts", "burnouts", "wheel stands", etc., was more noticeable at this time of the evening than it was the year previous.

The evening was clear, the moon was full and there was no sign of rain.

Between 6.00 and 8.00 p.m. a random breath testing station was observed in operation on the approach to the mountain.

The crowd around the compound gate had grown to about 600 by 6.00 p.m. At about 7.30 p.m. there commenced a sporadic barrage of missiles and incendiary torches thrown toward the compound fence and into the compound. Arrests had been made and the gates had been closed.

Just after 8.00 p.m. a man who entered the compound and attempted to damage a police vehicle was arrested. A senior officer who was mingling with the crowd was struck by a brick. The police then announced a warning for the crowd to disperse.

The TRG were called out and assumed a garrison defence position around the compound, at 8.08 p.m., and soon became the focus for attack by the crowd. They were stoned with bottles, cans, rocks, bricks and petrol bombs. The crowd outside the compound was divided into groups of several hundred individuals (many affected by intoxicants) who taunted and attacked the TRG phalanx on three fronts. Behind this "ring" was a congregation of over 1,000 spectators who sat viewing the event (eating and drinking) just outside the range of the TRG onslaughts.

The TRG operated in the same "snatch and grab" arrest manoeuvre which they had carried out in 1982. They apprehended members of the crowd in a very vigorous manner. I later noted certain targeting being organised by police observers within the compound as well as a practice of suspect selection activated by sergeants inside the TRG phalanx.

The police attacks were responded to by the crowd with further examples of violence. Discrete occurrences such as the attack on police vehicles, the torching and destruction of a television news team's car and the attempted burning of the toilet block provided further foci of aggression and evidenced further attempts by the crowd to secure their ground. The police had little if any power to prevent such destruction. They seemed pre occupied with defending the compound perimeter.

Around about 9.45 p.m. for some reason the spotlights outside the police compound were cut and the police on the western side made a significant attempt to secure a large amount of ground around the compound. This appeared to be in response to the call to disperse made five or ten minutes earlier, by the officer in charge.

At 10.20 p.m. the TRG formed a very tight flank and went to the east of the compound in order to provide cover for certain ambulance paramedics who were called out to treat an injured biker. It appeared that the injury to the biker was sustained during one of the riot charges. While this protection move was on the TRG took the opportunity to divert attention and press further into the bikers' lines than they had on any previous occasions.

From about 10.15 through till 11.50 p.m. I was able to spend time in the compound. The officer in charge made several particularly brave single sorties out into the crowd which was at the front of the police compound, in an attempt to establish some dialogue and pacify some of the "rioters". But by this time, the violence was too widespread for such individual pacification to be effective.

By the time I arrived at the station the TRG was showing signs of weariness as well as carrying a significant number of injuries. There appeared to be more than 20 injuries to TRG officers some of them quite debilitating. The TRG seemed to be ill-equipped and the equipment that they did have was in short supply at this stage due to damage. The numbers were depleted to such a stage that the TRG groups had to be supplemented by general duties officers dressed in whatever riot equipment they could find. In terms of TRG practice it was obvious that they were targeting those individuals whom they considered to be troublemakers. While TRG numbers appeared to be consistent from the outside, when one is inside the compound it was apparent that single TRG officers came back to the compound in dribs and drabs either to recuperate, to re-equip or to be patched up. They would then be reinforced by other rested TRG officers. This allowed the senior officers in the compound he felt constrained to take the decision to call up the TRG. He and practice and new targets the TRG should concentrate on.

It is interesting to compare the separate accounts of two senior officers in the compound, regarding the generation of the conflict. One said that by 7 o'clock the police in the compound were aware that there would be some sort of trouble. They were willing to tolerate the damage being done in front of the police compound, as well as the rock throwing and abuse. However when a significant barrage of bottles and burning missiles were thrown into the compound he felt constrained to take the decision to call up the TRG. He and two other senior officers had gone out into the crowd between 7 and 8.00 p.m. and attempted to mollify them. This had not been a success. It would appear from this officer's demeanour that he was extremely disappointed that the TRG were called at all. He felt personally disappointed that the "softly softly" approach which he had advocated so far had failed. However, the safety of his men and what he considered to be safety of those members of the public who did not wish to be involved in the violence was being compromised and therefore he had no alternative but to call up the TRG. He did seem to indicate however that the police action in his view had not been a success.

It appears that the TRG when called out spent no time in going to the front of the compound and setting up for the attack. While I was there this officer was called by the police public relations officer to deliver to him the official account of the event. He seemed confused and uncertain about the best way to represent what he considered to be a failure in his attempt to avoid violence through "soft" policing. The account settled on appeared to be based on the assumption that whilst the police operation was the same as last year the nature of the crowd was significantly different.

I spoke to another senior officer, who gave a somewhat "hard nosed" account of what had gone on. He indicated that the police had given every opportunity

for the bikers to settle down and they had refused to come into line. He felt that his men took more than an acceptable level of violence and that in the future such passive approaches would not be acceptable to him. In fact he said that if there was any violence on the following night the police would tolerate no acts of unruly behaviour. He also indicated that in relation to all other offences such as driving without helmets and other motor traffic offences, etc. the police on Sunday would crack down to the limit of the law. Both senior officers had been willing to be parties to the soft police approach at the early stage of the evening but it is interesting to compare the differences in attitudes to the consequences of the failure of that approach. The latter, for example seemed to be in no way disappointed but rather frustrated that the police had not been able to take control at earlier times.

- (iii) **1986** Following the disturbance the previous Easter the Bathurst City Council enacted an ordinance designed to restrict the transport and consumption of alcohol within certain areas of Mt Panorama. As a result the Council mounted check points on the approach roads to the mountain where assisted by the TRG vehicle and property searches were carried out. The mountain was entirely the policing domain of the TRG. Patrols of TRG officers were deployed throughout the camping area. The number of campers was down significantly on that of the previous year. Large areas of the camping ground were unoccupied.

The alcohol ban provided the opportunity for the TRG to arrest anyone in possession of alcohol on Good Friday. This clearly had an intimidatory influence on the spectators and radically changed the atmosphere in the camping ground, from that which prevailed in previous years.

Police patrols of between two and six officers constantly moved through the area, checking on tents and asking questions. This was the pattern day and night.

There was a notable exodus of bikers, from the mountain area throughout Friday and Saturday. The police were referred to by some as "the Gestapo" and jokes were passed about the fact that "people were not on the mountain to have a good time, after all".

On Saturday evening there were only small groups of riders congregated in and around some of the hotels in the town. There was no large congregation around the police compound on the mountain. Due to the vastly extended "no go" alcohol free area around the compound which was fenced from the Bathurst Light Car Club Kiosk in the south, the toilet block in the west, and completely around the observation mound in the north. any gathering close to the police station itself was impossible.

The police felt safe not to expend their energies protecting the compound and concentrated their activities on the rest of the camping area. The foot patrols continued while around 20 TRG officers remained in the shadows around the Castrol tower.

The main area of confrontation as it developed on Saturday night was located on a traditional spot for bullrings about midway between the entrance of McPhillamy Park and the compound.

The TRG in a group of 30-35 broke up bullrings on at least two occasions. There was a great deal of hostility evidenced by the crowd towards the police — particularly when they broke up the bullrings. It is worth noting that the bullrings were away from the compound, were not hostile to police in themselves and were typical of the traditional games played by bikers at such race meetings. The police interest in these bullrings rested in their potential to form a focus for further unruly collective behaviour, as well as the threat that such games posed to the safety of surrounding campers.

On one occasion a bullring surrounding a game of shoulder fights (cock fights) was dispersed by a large number of TRG, moving en masse into the centre of the ring and then dispersing the crowd outwards. The TRG then moved into the shadows amidst a great deal of hostility. However because of their numbers and the relative thinness of the crowd further confrontation by the crowd did not eventuate.

The TRG were equipped as they had been at the check points — long batons, military garb, no shields and no helmets.

No bullrings formed after about 9.30 p.m. The TRG continued to patrol in large numbers through the camping area and amongst the tents. About 10.30 a search of a camp site was observed. The police with torches searched belongings and vehicles but found nothing. The youths later congratulated themselves on hiding the 'stash' of marihuana so well.

Comment on Police Strategies

In microcosm the three policy exercises referred to above cover the gamut of police strategies employed since the mid 50s, for controlling public behaviour in Bathurst, over the Easter weekend. The selection of any such strategies can also be analysed if one looks at the historical development of policing the Bathurst event.

These strategies could generally be categorised under three headings (although there have been occasions where certain combinations of these approaches have been attempted.)

1. *The non interventionist or "soft" policing option:* In 1974 the inspector in charge of the Bathurst operation described the police decision to allow rival bike gangs to "control the mountain" for a time, and allow these groups to eventually quieten down by themselves "We had about 100 police on standby but did not call on them for fear of inflaming the situation further" (*Western Advocate*, 12/4/1977).

This approach rests on the recognition that police intervention can re-direct the focus of public disorder and increase its violent potential.

The characteristics of the approach are as follows:

- i) to establish the appearance of normality wherever and for as long as possible. This may be achieved by low visibility policing, using uniformed general duties police officers, and by keeping the riot police and paraphernalia out of sight;
- ii) giving the appearance of reasonable concessions in order to allow some scope for the leisure activities to evolve (eg. limited use of R.B.T. patrols). The hope is that this will win the concession of fair play from the other side;
- iii) to endeavour to establish constant dialogue between the police and the spectators. The assumption is that if you can keep them talking, and establish some form of rapport, then it is unlikely that violence will be readily directed towards a "friendly" police officer";
- iv) to exercise discretion not to enforce minor traffic and public order infringements. This will overcome the accusation of police harrassment;
- v) to retain in reserve some sort of strike force if the conciliatory approach breaks down.

2. Garrison or Limited Interventionist Policing

When the non interventionist approach breaks down, as it was said to at Bathurst in 1985, then a symbolic show of force is usually the first resort police strategy.

The features of this police option are:

- i) a concentrated public show of potential police power;

- ii) the specific and localised use of police force;
- iii) clear evidence of police power to "hold their ground";
- iv) a response to violence with larger degrees of violence through high technology policing;
- v) the liberal application of the criminal sanction;
- vi) a "mopping up" programme where all infringements of Acts, Regulations and Ordinances are policed;

3. Saturation Policing

The earliest example of this approach at Bathurst was the introduction of multiple foot patrols in the Bathurst township in the sixties. With the arrival of specialised unit policing, areas such as the hotels and the parks could be constantly effected by a police presence. However, it was the "swamp" (Scarman, 1982) style of policing in operation at Bathurst in 1986 which provides the most extreme example of saturation policing of the event so far.

This police option relies on;

- i) the commitment of relatively large numbers of police officers in full shifts over a 24 hour period;
- ii) the total control of "trouble spots", by police patrols;
- iii) the exercise of stop search and seizure powers (both regular, and those created for the purpose);
- iv) the practice of identity checking and "moving on", to break up potential crowd behaviour;
- v) the full enforcement approach regarding infringements of all Acts, Regulations and Ordinances relevant to crowd control and public order;
- vi) pro-active endeavours to neutralise previous foci for collective disturbances, eg. physical alteration to compound site to somewhat overcome need for garrison methods.

The interesting consequence of this third police strategy is the way in which it effects the nature of the event, and the community being policed. There can be no doubt that the greater the commitment to saturation policing, the more likely is the consequence that the police will maintain a notion of public order. But at what cost to the object of the police exercise?

In the case of the Bathurst weekend the whole nature of the use of public space was constrained. The carnival atmosphere of the Friday and Saturday nights on the mount (which has been a feature of the campsite whether riots have intervened or not) was absent.

The control of alcohol consumption through the use of arrest powers not only had the effect of restricting unruly behaviour, but also brought more people within the purview of the criminal justice process. Both despite, and as a consequence of the saturation policing exercise there were 106 arrests made over the weekend, and of the 153 charges laid, by far the greatest majority were for breaches of the Council's alcohol restriction ordinance, which was created specifically to assist in policing the event.

Relations between the police and the bike riding community were not advanced by this type of policing strategy. The searching of tents and vehicles, the constant police patrols throughout the campsite, the police action to break up collective game play, the frequent arrests for minor offences, all contributed to a distinct escalation in anti-police feeling. The increased encroachment of the police compound into the camping area was symbolic of the intrusive police presence into camp life on the mount over the weekend. Even entry and departure decisions which essentially effect the makeup of the community on the mount, were to some extent dictated by the police.

And the associated interests which influence the perpetuation of the event are fundamentally effected by this police strategy. Gate takings were down by almost half

that of previous year. The adverse influence on the Auto Cycle Union of N.S.W. (A.C.U.) which co-organises the race, is obvious. The Bathurst Chamber of Commerce could not afford to ignore the fact that the takings of local petrol station and hotel proprietors was reduced on last year's trade by up to 50% (*Western Advocate*, 2/4/86). Yet the various motorcycle riders' association, the City Council and local commercial concerns have, and continue to abrogate their responsibilities to take back some control over the policing of their respective interests. It is interesting that the only major grouping involved in the Bathurst control equation, which benefitted from the saturation exercise was the police. The TRG were in a complete "win" situation. In the eventuality that the violence was restrained, the TRG would take the credit. Even if violence had occurred the TRG could have argued for even greater artillery and powers to increase their presence in following years.

Having briefly examined the nature of certain police strategies, it is necessary to make some observation concerning the process of choice as to which will be appropriate for the expected circumstances of the event.

Police strategies are primarily constrained by physical resources and public expectations. Obviously in the year or years that follow the occurrence of a major disturbance the State is more willing to invest in police hardware and manpower, and the local community will be sensitised to the need for a more significant police presence during all aspects to the Easter Weekend.

In so saying one should not overlook the internal police dynamics which effect the choice of police strategy. Such a choice cannot be viewed as logically arising as a consequence of external pressure. The various conflicting interests that comprise the police operation from inception to review, will play an essential role in formulating police strategy.

Reflect on this scenario: There is a commitment from senior police officers in charge of the Bathurst operation, to a non interventionist style of policing. As a consequence of this they instruct that police patrolling of the town be inconspicuous, R.B.T. and check point road blocks be limited, selective and not act as an excuse for search and seizure exercises, that dialogue be established between the police and the spectators at all levels, and that the "riot squad" be held out of sight in reserve. Naturally enough the officers in charge of the Highway Patrol and riot squad units do not agree with this approach. On the Saturday evening the crowd outside the police compound becomes boisterous and there is some confusion at command level as to whether to call up the riot squad. Before a "riot" erupts the riot squad arrives and established a garrison policing position. A riot develops and the following day the official police response emphasises the need for a saturation style police strategy in future years.

It is clear that the organisational structure of a police force will influence the strategies selected to police public order and vice versa. In the following section I will examine one example of where and pressure to introduce a certain police strategy has lead to organisational changes within the force which in turn have greatly influenced future strategies on crowd control.

Organisational Specialisation in Policing Public Order.

The Tactical Response Group was established officially on May, 1982. The reason given for the formation was the confrontation between police and spectators at Bathurst Motor Cycle Races in April 1981, during which 130 people were arrested. The media depicted the 'riot' as caused by a large 'mob of bikies' suffering from 'booze and boredom'. An editorial in the *Sydney Morning Herald* was quick to draw wider implications. It spoke of an 'undercurrent' of frustration relieved by spasmodic violence which afflicts some of today's 'young and not-so-young'. Other examples cited were 'rioting' at the Stage Door Tavern the

previous year and 'rowdy scenes' at Cricket Test Matches. The police and courts alone could not 'combat this phenomenon'. However, the more immediate response was to establish a police riot squad. The 'riot' had occurred on Saturday night, April 18. By the morning edition of the daily papers on Wednesday April 22 the formation of the TRG was announced. As the *Herald* blandly stated 'Police Plan Riot Squad in Wake of Bathurst'. The people of N.S.W. were given the clear impression that the police had moved very rapidly to establish the new squad directly because of the 'riot'.

Two important points need to be made concerning this sequence of events. Prior to this announcement in April 1981 at least three groups had previously carried the title 'riot squad'. The 21 Mobile Division had been known as the 'Flying Squad' and the 'Riot Squad'. The specialist group SWOS (Special Weapons and Operations Squad) was originally known as the 'Riot Squad' and later the 'Emergency Squad'. Thirdly the Police Rescue Squad had certainly acted as a riot squad on many occasions. Furthermore then Police Minister Crabtree admitted in a press release one week after the April 1981 'riot' that plans for the TRG had been underway for months (*Telegraph* 27/4/81). The illusion that the TRG was formed in response to Bathurst was clearly fabricated. (Cunneen, 1985:74).

The creation of the TRG was an event which was not publicly debated nor was it even argued at the level of community accountability.

The establishment of the Tactical Response Group within the N.S.W. Police Force, its mode of deployment since its creation and the general aura (largely induced by the popular media) surrounding it arguably heralds the arrival of an entirely new style of policing in N.S.W. By dint of the privileged and independent power exercised by the police in respect of law enforcement policy, and without so much as a sideways glance from the parliament let alone an informed public debate, the people of N.S.W. have had imposed upon them changes in law enforcement arrangements that will prove in time to be far more significant than those recent reforms to the Criminal law (the repeal of the *Summary Offences Act*, for example), whose (*sic*) passage aroused such din and clatter in this State. (Hogg 1984a:49).

When the TRG took shape, public statements from Senior Police Officers indicated that a very broad function was envisaged for it. For example, Assistant Commissioner Ross stated in 1981 that the TRG might be responsible for:

The policing of Corrective Services establishments during industrial disputes, acting as response team to large crowd control situations, riots, demonstrations, disasters, saturation patrol, other serious matters; supportive element to the S.W.O.S. in an emergency hostage/seige situation, including the containment and maintenance of controlled perimeters; and such areas as may be deemed advisable in view of their specialised training (NSW *Police News* Feb. 1982:48).

In 1982 the then Superintendent of the TRG described his men as an "elite squad trained in unarmed combat, back on the streets to fight hooliganism, rape and bag snatching". In terms of the TRG's potential as a rapid deployment force he continued:

The new idea is to have the TRG ready as a support group to go to any trouble area . . . The TRG will be ready to spring up anywhere and they will be like mushrooms. If there are any trouble makers they will opt out of the area because it will suddenly be flooded with police. (*Sun Herald* 18/4/82).

One of the most common criticisms raised against the formation of such specialised riot control squads is that they may originally be justified as a radical response to a specific and limited social threat, but their operational involvements develop quickly to incorporate many of the more usual general duties of police work. This certainly has been the case with the TRG. Since inception it has not only policed the Bathurst bike races, it has evicted trade unionists from an occupied building,

broken up an alleged disturbance at a juvenile remand centre, regularly patrolled the streets of certain of Sydney's Western Suburbs, been involved in policing certain demonstrations during Anzac Day celebrations, patrolled large sporting events, and was responsible for the arrest and shotgun wounding of an unarmed 16 year old youth who had absconded from custody (Hogg 1984a;49).

When the TRG became fully operational on May 1, 1982 the squad had emerged as an integrated group numbering several hundred men, designed to carry out wide ranging activities within the N.S.W. Police Force. Equipment available in May 1982 included riot helmets; gas masks; ballistic helmets; selection of batons; shields; bullet-proof vests; groin, shin and arm protectors; U.S. made 870 type shotguns; (Cunneen 1985).

Some criticism has been made of police tactical units on the grounds that they may introduce a 'heavier' element into policing. The fear has been expressed that because these units exist, with their emphasis on being prepared for violence and their access to special equipment (such as helmets, shields, long batons, chemical munitions), they will be deployed in situations in which more conventional police units have been used in the past and will introduce a more confrontationalist element into the situation. This, it is claimed, leads to greater violence and more injuries than would occur with use of 'normal' policing methods. Others see the introduction of tactical units as the thin edge of the wedge for the creation of a paramilitary police force.

While some of these issues have often been raised in a largely ideological context by those who oppose police generally, they do nevertheless expose some genuine problems which police have seldom been willing to acknowledge publicly. There is certainly a seeming contradiction, in terms of philosophy, training, and tactics, in having units trained extensively in riot control and associated skills and also being expected to carry out community policing duties. The possibility must be honestly addressed of a preparation for violence and training in aggressive techniques having a spillover effect such that members of tactical units approach their normal policing in a more aggressive manner than is desirable. (Wardlaw: 1986; 232-3).

There can be no doubt that by creating such specialised squads there is also created a risk of alienation on several levels. Firstly some sections of the community, particularly those who become the objects of TRG policing, will be further removed from the image of consensus social control. Next there is the reality of alienating the TRG (and more importantly the responsibility for public order policing) from the main stream operational concerns of general duties policing.

The structure of the TRG seems designed to ensure that a sense of independence and elitism develops. It is almost like a police force, within a police force. It has executive, administrative, operational and training elements, as well as divisional structure to provide 66 teams to complement the District organisation of policing in this State (*see* Wardlaw 1986 236-7, for greater detail on TRG organisation).

The TRG has grown from an initial strength of 40 to a present operational strength of 264. This is a remarkable 600% increase over its four years of operation. From 1982 to 1983 its "tasking" rating increased tenfold. (Wardlaw 1986, 238), yet the only events policed by the TRG which actually resulted in acts of violence were the Bathurst Motor Cycle races, and the Anzac Day demonstration.

In spite of the belief that public disorder is now more frequent or more violent than in the past, it is still a relatively rare occurrence in Australasia. This frequency creates major problems for police administrators. Police are severely criticised when they seem to be unable to effectively control a violent crowd. They are accused either of over-reaction, thus making the confrontation worse than it need have been, or of being insufficiently organised or equipped to handle public

disorder. There are criticisms of lack of discipline in the face of provocation and of having overly authoritarian attitudes. Many of the proposed solutions involve the provision of specialised training and the formation of units with a specifically public order role.

Unfortunately, however, it is difficult to justify, for example, the maintenance of a dedicated riot control unit, when that unit may be used only rarely, if at all, on riot control duties. But if a riot does eventuate, and police either fail to contain it or over-react because of inadequate planning and training for, and discipline in, these situations, they are the target of considerable criticism. The solution attempted in some forces has been to create multi-role units which combine some elements of public order duties with such other specialised areas as armed offender operations, protective security, and in some cases, search and rescue. Other forces have created more specialised but part-time squads. (Wardlaw 1986, 231).

Perhaps the most important ramification arising out of the establishment of riot squad "fire brigade" policing, is the implied admission that relations between the normal civil policing agencies and certain sections of the public have deteriorated to such an extent so as to necessitate such a paramilitary response to the problems of social control. Once established these squads prove to be self perpetuating. They also evidence a clear acceptance by the police, to take on board an ever expanding commitment to their original operational goal as "moral prefects" and the controllers of the "underclass" (Silver 1976). Their response so often takes place outside the arena of public debate.

This is in large part because the police are usually assumed to be a dependent variable in discussions of public order and crime — called upon to react in defence of the interests of the community wherever disorder and criminality are apparent and occasionally invited to offer professional and authoritative guidance in relation to such problems. This ignores the critical role played by the police in the definition of events — of what is crime, who is criminal, what constitutes disorderliness. One of the most important features of the TRG is the frequency with which they are likely to confront such situations — as a mobile force they, by their very nature, are not required to construct localised relationships or networks but to be ready to respond to situations judged in advance to be problematic and as likely to warrant special tactics and usually force. Sensitised to the likely need to resort to force wherever they are called upon to act, such squads are also equipped with the weaponry and technology which permits, and perhaps even encourages, them to do so. The shotgun shooting of the absconding juvenile referred to earlier may be one such example. This organisation necessarily places far greater emphasis (even than is the case elsewhere in the police force) upon internal co-operation, interdependence and co-ordinated action rather than reliance upon information and co-operation from members of the public. This engenders insularity, elitism and a readiness (and, in part, a necessity) to confront situations in much more black and white terms — targeting groups and individuals as 'enemies'.

Lacking a continuing relationship with any local community such squads can afford to have less concern for the consequences of their interventions.

All of these dimensions of the TRG combine to heighten the likelihood that their routine definition of situations and mode of intervention will

be organised around force. In this respect, the operational aspects of policing are inseparably linked to the ways in which different situations are defined for the purposes of police intervention. The creation of special squads for the exercise of force in 'extreme' circumstances can become self-fulfilling and self-perpetuating. The Bathurst bike races are a case in point. (Hogg, 1984a:50-51).

The Application of the Criminal Sanction in Controlling Public Order.

As I have argued previously (Cunneen and Findlay, 1986) the charging pattern which arises out of the policing of public order is a useful indicator of how police agencies perceive their function and interpret the behaviour against which their control actions are directed. The application of the criminal sanction to collective behaviour in turn will have a contra influence on concepts and procedures central to the operation of criminal justice. This will be examined in the next section. Suffice to say at this stage that the application of individual criminal responsibility to collective behaviour, rests on individual identification of offenders who, while being proved to possess personal guilt, will be punished to a great degree as representative of the collective endeavour which was the environment which determined their behaviour. The offences with which they are charged will either rely on the collective behaviour and common purpose for their individual definition (eg. affray) or will be aggravated by the fact that they contributed to the collective threat. While the crowd cannot stand in the dock, its spectre compounds the determination of criminal responsibility.

The following are some variables which may influence the nature, frequency and trends of charge patterns at Bathurst;

1. the type of collective behaviour
2. the symbolic representation of such behaviour, past present and future
3. the variety and scope of public order legislation
4. the various specialised squads represented in the police contingent
5. the size of the police contingent and
6. the police strategy employed

If we accept Cunneen's assertion that the history of youth disorder at Bathurst indicates little change in the overall pattern of the crowd behaviour at Bathurst (excluding of course crowd size) then the other variables take on greater significance in explaining charge patterns.

The police are central to the charging process. They interpret the behaviour and select the appropriate offence categories. They exercise discretion as to whether they charge or not. They may negotiate or bargain charges. They usually settle the immediate consequences of the charge, such as bail. It is the selective emphasis of policing, effected as it is by political and community expectations which must dictate the types of charges laid after each Easter Weekend.

The level and pattern of charges will be a measure of police activity in a formal sense. As such they do not indicate anything about the significant level of discretionary control activity outside the charge process. A measure of charges can only be seen as a comment on crowd behaviour insofar as it indicates the fact that the police have interpreted the actions of participants as constituting a criminal offence.

In order to analyse the significance of the "police" related variables and the manner in which the police have chosen to define certain crowd behaviour, I have examined the nature and frequency of charges laid over the Easter Weekend at Bathurst, for the period 1960-1986⁵. Certain hypotheses can be tested as a result of this endeavour.

5. This of course does not include the charges which were dealt with by the justices who held special sittings at the Bathurst Police Station. The source of our charge data is court records and no such records were kept of the police station hearings.

1 *The greater the police contingent at Bathurst, the greater will be the number of charges layed.*

This is not difficult to test. When one compares the numbers of people arrested with the total number of police on duty (the sources of this data being press reporting) the correlation is interestingly, not constant. For example in the later part of the sixties there seems to be no clear relationship between police numbers and arrest totals eg. the largest number of arrests over that period was in 1967 when the fewest number of police were on duty. The same lack of correspondence appears selectively in the 70s and 80s. In 1978 police strength was 392, over twice, that of the previous year, and yet the number of persons arrested fell by 20. During the early 80s when police strength remained fairly constant, arrest figures fluctuated over a range of 20-167.

Despite the inadequacies of the Bathurst court records for providing charge data,⁶ charges may in fact give a better measure of total police activity. Even on this level a correlation could not be established. True it is that the smallest number of charges arose out of the period 1961-65 when the smallest number of police officers were present. However the highest number of charges arose out of the period 1966-1970. When compared with 1980-84 when police strength was 1,510, the police total for the earlier period was 362.

This assumption does not stand. Perhaps the police might argue that this lends support to the notion that a greater police presence will deter breaches of public order. The difficulty with this line of argument is that the years between 1980 and 1984 when police numbers remained relatively constant, the arrest and charge figures varied enormously. I can only conclude that absolute police strength is not a significant influence on charge patterns. Bearing this in mind it could be argued that arrest and charge rates are not the most useful measures of police activity in crowd control. After all they only shout the level at which the formal criminal sanction is activated as a control mechanism.

2. *Trends in charge pattern are influenced by the introduction of specialised police division into the policing exercise.*

If we take the period that 21 division was active in policing Bathurst we have by far the highest total charge period (eg. 1966-1979). Their first five years of operation was the highest in terms of relative charge rates (more than two and a half times that of the previous five years). True there was an almost doubling of police strength in the latter part of the 60s but as we said in the previous part that should perhaps work against an increase in charges.

Of more interest is the immediate effect that the introduction of 21 division had an arrest and charge patterns. In their first year at Bathurst the arrest rate more than trebled from the previous year. The nature of the charges altered as well. From 1965-1967 charges related to public drunkenness (dealt with in petty sessions) went from 18 to 111 and went from percentage figure of total charges from 37% to 77%, conversely offensive manner charges dropped in absolute terms, and in percentage terms from 25% to 7%. Language offences remained significant throughout the 21 division period right up until their last year at Bathurst (which corresponded with the year that the *Summary Offences Act* was repealed): Another interesting feature of the first few years that 21 division helped police at Bathurst, is the shift in location of offences. Prior to 1966 by far

6. Accurate charge totals for the Bathurst C.P.S. were difficult to guarantee, with charges being remanded to other dates, other courts, and even certain charges not being heard in petty sessions. Also intoxicated persons detainees after 1980 may not appear as charged persons even though they were the objects of significant police activity.

the greatest proportion of charges arose out of incidents in the town. In 1967 the incidents were equally divided between the town and the mountain and except for the odd year from then on the mountain developed into focus for charge related behaviour the mountain almost always was the arena for conflict in "riot" years following 1972.

Perhaps a more obvious correlation is that the occurrence of smoke/possession Indian hemp charges corresponded with the year that the drug squad attended the races (this was not the case in the last three years when drug charges were laid by the police officers other than the drug squad, but not to the extent of the "drug squad years").

Even though we have only referred to two divisions (squads) here (squads which may be viewed as unique in an operational sense) and it is perhaps too early to make a definitive comment on the influence of the TRG, the obvious influence of 21 division on charge rates would lend support to this second hypothesis.

3. *Changes in policing strategies will influence charge patterns.*

If one returns to my earlier discussion of police strategies and looks for the years where such strategies were obviously applied, it becomes possible to analyse their influence on charge patterns.

1977 and 1984 were years when non-intervention, soft policing options were tried. For both years the charge rates were very low (although in 1977 the press unaccountably reported a high arrest rate of 138 persons). One might say that this was perhaps a fortunate coincidence that these were years where riots did not occur and that was due to crowd behaviour rather than police strategy. On the data we have I am not able to debate such a question of temporal sequence.

1966, 1967, 1976 and 1985 were examples of years of garrison interventionist policing (even though police indicated that in its early stage 1985 was non interventionist). Except for 1976 the charge rates were high (although the arrest rate for 1976 was one of the highest on record). There seems to be little significant trends in charge pattern except for the occurrence of the more serious offensive behaviour charges and explosive charges in 1966, the resist arrest charges each year, the assault police and malicious injuries charges in 1976, and the extraordinary use of the common law riot and affray charges in 1986.

1978 and 1980 were perhaps the best examples of saturation policing of the Bathurst event. Both years were not represented as occasions of riot by the police and although 100 arrests were recorded for both years, the charges were related to the ingestion of intoxicants or breaching the local council ordinance concerning the transport of alcohol onto the mountain.

Because one might be accused of being biased in the selection of those years in which particular police strategies were attempted⁷, and because what confines a police strategy might be viewed as contentious, I am wary to take a definitive position of this hypothesis. Suffice to say that certain police strategies appear to influence crowd behaviour (and vice versa). Also some instances where police strategies have been overtly and vigorously pursued, appear to show certain unique results as regards charge rates and trends.

Perhaps the most obvious example of a particular police strategy at Bathurst was the construction and almost annual expansion of the police compound on the mountain. One would expect that such a move either reflected an earlier shift of the centre of conflict from the town to the mountain, or an effort by the police to remove the trouble if it occurred, away from the town.

7. I have made this choice based on press reporting, official police statements, and police manpower figures.

In 1967 there was a pronounced increase in the proportion of charges made on the mountain. Between that year and 1973 the percentage of mountain charges were less substantial but still more significant than for the period prior to 1967. For the years between 1973 and 1977 there appeared to be a trend developing wherein the mountain had become the principal arena for conflict and the Saturday night "troubles" in the camping area were somewhat institutionalised. However, during the two years prior to the establishment of the compound, this trend seemed to reverse.

The police presence on the mountain was increased in 1979. An increase in "mountain originated" charges also occurred that year. It is important also to realise that this was the last year that 21 division attended the races. In addition the "offensive behaviour" type charges and those associated with violence such as "assault police" were proportionally high, as they had been in 1975, 1976 and 1977 (those years when the trend to violent conflicts on the mountain became established).

Following the commencement of operations from the police compound in 1980, the year X location of offence frequencies confirm that the mountain is the focus of conflict (eg. in 1983, 93.3% of charges preferred over the weekend arose from behaviour on the mountain).

In terms of total charges laid, for the ten years prior to the establishment of the compound, 198 charges rose from mountain based behaviour. Since then for the six Easters of its operation, the police compound has been the centre for the processing of over 900 charges.

Despite the clear evidence that the compound has provided a focus for the conflict in terms of the number of charges arising from behaviour in its vicinity, police strategies emanating from the compound may have influenced the nature of crowd behaviour. Particularly in the two worst riot years since 1980 (1983 and 1985), those charges relating to violent behaviour (eg. resist arrest, assault police, malicious injury) were far more notable in the charge breakdown than on previous years.

4. *That Charge Patterns are Influenced by Available Legislation.*

This is perhaps the least contentious of the hypotheses so far. It is simple to observe the shift in the use of certain charges immediately following the amendment of certain public order legislation.

The use of the offence of public drunkenness has always been the standard recourse for police in controlling public behaviour in Bathurst. Such offences are even more significant than what would appear from the court records as it would have been these types of charges which would have been dealt with by the justice at the police station.

The *Intoxicated Persons Act* commenced operation in April 1980. As one might expect with the "decriminalisation" of public drunkenness no such charges would appear on court record following that date. (In fact no such charges, accept when associated with motor traffic law, appeared following 1976). One should not assume that the prohibition of public drunkenness in one form or another was no longer potent in the controlling of public behaviour. In 1980 and 1981 a total of 91 people were detained in custody (at a proclaimed place) overnight under the provisions of the new Act. In addition to the Council's recent ordinance prohibiting the transport and consumption of alcohol on the mountain provided the basis for by far the majority of arrests in 1986. Finally, particularly on those years when a riot is not in evidence, "drink-driving" charges make up a large proportion of the charge total (eg. 82% in 1982).

The controversial *Summary Offences Act* 1972, was repealed in 1979. This meant the end of charges such as indecent language, indecent and offensive manner, etc. This Act was replaced by the *Offences in Public Places Act*. For a variety of well publicised reasons the police have a great disaffection for this piece of legislation and therefore despite certain occasions where s.5 was employed as the principal charge at Bathurst (eg. 1981) the police did so reluctantly, and criticised the adequacy of such a charge, to control such behaviour. Following the amendment to s.5, in 1984, which brought the offence more into line with police preference, there were 106 charges under the new s.5.

An interesting side line on the issue of available offences, is the constant clamour (that there is a need for tougher legislation) which arises from senior police sources, and the Police Association, following a riot at Bathurst, that there is a need for tougher legislation. In fact the Premier responded to such pressure in 1983 and 1985 by foreshadowing the possible introduction of a new "Riot Act". Undeterred by the fact that no such legislative initiative eventuated, the police utilised the old common law offences of riot and affray (each carrying the possibility of substantial terms of imprisonment) on 95 occasions in 1985. In conjunction with the attempted murder charges laid that year it would seem strange indeed for the police to argue that they require increased legislated power in order to effectively deal with the Bathurst crowd threat.

Police charge patterns do reflect the variety of offence options available to them.

5. *Those years where the press reported the occurrence of a riot, were similar in terms of the arrest and charge patterns evidenced.*

This is perhaps the most complicated of the hypotheses so far presented. If we take the period from 1970 through until 1986, of those years reported as being riotous, the arrest rates for those years were higher than that of the year immediately prior to it. However, this rate must be viewed against the fact that in 1973, 1975, 1977 and 1978 a hundred or more arrests were made and no riot was reported.

As for the charge patterns, each riot year appears to be unique. In 1985 there were a very large number of riot and offensive behaviour charges laid. 1983 saw mainly traffic related charges. In 1981 over 72% of charges were for serious alarm and serious affronts (S.A.S.A.) 1980 saw a fairly even spread of charges with motor traffic offences again predominating. Offensive behaviour type charges made up of almost half the charges for 1976, and 1972 saw a similar trend except for the inclusion of 17% of charges relating to public drunkenness. Therefore it appears that factors such as the offence categories available, the police divisions present at Bathurst, the location of the crowd, etc. may all influence the charge pattern to differing degrees, during each riot year.

The Special Courts

With the level of arrests and charges at Bathurst over the Easter weekend almost trebling in the mid-sixties, it comes as no surprise that a system of special courts was established to enable the processing of offenders with a minimum of delay. The use of Special Courts at Bathurst began during Easter 1966 the year which arrests totalled 176 persons. During the previous Easter some 55 arrests were made and with the Court of Petty Sessions not next scheduled to sit until 10 days after the event, this delay was considered to be unacceptable.

The 1966 special court sittings were organised for Easter Saturday and the following Tuesday. It was not simply co-incidental that these extraordinary judicial arrangements co-incided with new policing strategies centering around the involvement of 21 division in the policing of Bathurst. The Saturday morning hearings dealt with

those persons arrested on the Friday and who had been unable to arrange bail. Even with these cases out of the way, the Tuesday hearings set something of a judicial processing record: cases against 156 individuals were heard in five hours and fifty minutes.

From 1970 onwards special courts became a regular feature of the judicial policing arrangements for the Easter weekend at Bathurst. While viewed officially as simply a bureaucratic expediency to overcome the sheer volume of arrests at Bathurst, the issue of special courts illuminates the manner in which the state can move to deal with civil disturbances which may overtax its normal procedures.

The courts held after 1970 consisted of two types. Firstly those presided over by a justice of the peace which were held at the police station on one of or all of the following days: Good Friday, Easter Saturday, and Easter Sunday. Secondly a special sitting of the Court of Petty Sessions was held either on the Easter Monday or the following Tuesday. Of particular interest were the courts held by the justices of peace. These were referred to as 'remand' courts or 'bail' courts. They were held in the police station under conditions hardly conducive to due process. While one function of the court was to determine bail, the justice also heard and determined cases. In particular the charge of drunkenness was dealt with at special courts. For instance for 1970 at least 33 cases of drunkenness were disposed of by the justice of the peace. To give some idea of how this freed up the process dealing with offenders, it can be noted that of the 142 charges in the police charge book for the Friday to Monday period, only 45 individuals appeared before the Court of Petty Sessions on the Tuesday. Of those 45 individuals 24 had been held in custody. The almost 100 charges remaining had either been dealt with or remanded to other dates by the justice. Thus the special courts became a necessary adjunct to the efficient functioning of Petty Sessions sittings.

The popular view of the special justice's courts in Bathurst was one of benevolent expediency. The *Sydney Morning Herald* (1/4/72) wrote that the courts were "arranged so that people from distant centres need not return to Bathurst at a later date. In the case of those who cannot raise bail, it will mean that the congestion of the local police cells will be avoided." After arrest and charging the sergeant of police sets bail. However if the offender cannot meet bail he or she is kept in custody until the next available court hearing. The police after setting bail cannot review bail conditions, determine the case or remand the case to a later sitting of the regular court. Until the introduction of the *Bail Act* in 1980 it was usual in the case of non-appearance of minor public order offenders to forfeit bail and treat the amount as a fine for the offence. In the cases at Bathurst those who were unable to meet bail were usually detained in Bathurst Gaol until court appearance. In some years they were the only defendants in court to answer charges, the others choosing non-appearance and forfeiture of bail money as an easier and (considering their potential loss of wages) a less expensive solution. For instance, in 1966 only 9 adults were present in the Court of Petty Sessions on the Tuesday after Easter although there were cases listed against 156 individuals. The nine that appeared had been unable to meet bail and so were held in custody over the weekend. Thus until the implementation of the *Bail Act*, the special courts presided over by justices were most unlikely to allow individuals out of custody on their own undertaking. Inability to meet bail meant Easter in gaol.

The justices were essential for hearing and determining drunkenness charges. These charges often formed a huge proportion of the weekend's total. The bail/fine for the offence was \$1 — anyone unable to meet this would have no doubt faced other charges under the *Vagrancy Act*. The large proportion of people charged for the offence of drunkenness was demonstrated during Easter 1976. There were over 250 arrests and 300 charges laid during the weekend. Special courts were held on the Good Friday, Easter Saturday and Easter Monday. One hundred and fifty of the charges, that is 50% of charges dealt with were for drunkenness. The other charges were

remanded to the Tuesday sitting of the Court of Petty Sessions where a further 154 cases were heard.

The operation of special courts heard by justices of the peace were necessary for the smooth functioning of the judicial system when placed under strain. Offenders could be processed and dealt with quickly and effectively. Minor offences, particularly drunkenness, could be heard and determined; those charged with other offences and unable to meet bail could be remanded in custody; the few, if any, who pleaded not guilty could be remanded to a later court sitting; and the rest could be set down for the next hearing of Petty Sessions. Given the volume of police work and court proceedings generated over Easter the necessity for efficiency was paramount. As the example of Easter 1976 showed, 250 arrests in one weekend had to be dealt with, and, according to police occurrence records, up to 84 prisoners in police cells at any one time needed processing.

After the introduction of the *Bail Act* in N.S.W. in 1980 the function of the special courts changed slightly. The spirit behind the *Bail Act* was to reaffirm a presumption in favour of bail for all offences except armed hold-up or other violent robberies, and to move away from monetary bail which was seen to discriminate against the poor. (Stubbs, 1984:4, 6). The *Bail Act* allowed for unconditional bail and for bail on non-financial conditions. The Act also created in s.51 the offence of failing to appear in court in accordance with a bail undertaking. Thus the old system of failing to appear and forfeiture of recognizance as a way for the defendant to deal with his or her case was no longer an option. Failure to appear in court to answer a charge became an offence in itself.

Despite the perceived liberal-progressive sentiments underlying the introduction of the *Bail Act*, the practice has often meant increased contact with the criminal justice system. The *Bail Act* for example prevented individuals from "legally" having their cases determined in their absence. The option of non-appearance was particularly useful for working class offenders who lived some distance from Bathurst, irrespective of whether they may have committed the minor summary offence as charged or not.

The special courts have continued to function over the Easter weekend. With the almost institutionalised pattern of "riots" the arrest rates have remained high and thus the necessity for the courts have continued. Generally those charged with PCA offences or serious alarm and affront under the *Offences in Public Places Act* and have been unable to meet bail conditions set by the police have their bail reviewed by the Justice of the Peace and are usually released on their own undertaking. However as the seriousness of the charges has increased to the use of indictable offences like common law riot, the numbers held in custody are still high. After the 1985 confrontation and the arrest of 164 individuals, thirty individuals were still in custody when they appeared in court on the Tuesday morning either being refused bail or unable to meet the conditions.

The incentive to plead 'guilty' to minor charges arising out of the Bathurst weekend, has always been apparent. An example of this arose in a case involving a 21 year old boilermaker charged with indecent language (*Summary Offences Act* [N.S.W.], 1970, s.9) and consuming intoxicating liquor in a public park (Local Council by-Law). The defendant and four others had been drinking beer in King's Parade Park in Bathurst at 11 a.m. on Good Friday morning. According to police evidence when arrested he said, "What are you fucking taking me for, I haven't done nothing", within the hearing of women and children. Before the magistrate the defendant stated, "We didn't know we were breaking the law when we took beer into the park". Concerning the language charge he stated, "I didn't say that and there were no women and children around. I can't afford to please 'not guilty'." The Bench replied, "It is not for you to plead 'guilty' if you say that you didn't say that." The defendant replied to the magistrate, "I will still plead 'guilty'. I can't get here again if I plead 'not guilty'."

As part of the overall arrangements for the control of Bathurst, special courts have continued to play a fundamental role. This is despite various legislation which would have apparently rendered a "bail" court superfluous. As discussed above the introduction of the *Bail Act* did not do away with the need for the courts — although on the surface the prime function of the court was to review bail conditions and the function of the *Bail Act* was to make bail more accessible. Nor have the numbers of those held in custody over the weekend altered radically, although there was to be a presumption in favour of bail. Like the special courts, the prime function of the *Bail Act* has been to speed up the processing of those involved in the criminal justice system. Both police and magistrates see this as the main advantage. As one police officer put it: "Unconditional bail is good — it lets you put PCAs and shoplifters through like sausages." (Stubbs, 1984:32). With the introduction of the *Intoxicated Persons Act* and the repeal of the offence of drunkenness (*Summary Offences Act* [N.S.W.] 1970, s.6) in 1980 the determining of those charges was no longer carried out by the justices in special courts. However individuals are still detained under the provisions for 'protective' custody in the new Act. In 1980 thirty-four people were detained in custody overnight under the *Intoxicated Persons Act*. In 1981 the number was fifty-seven. Thus the particular control practices remained much the same irrespective of changes in legislation.

In the broader view the use of the courts presided over by a justice of the peace is illustrative of the operation available to the state when dealing with larger scale social order disturbances. It demonstrates the type of strain put on the judicial system and the remedies available when dealing with collective behaviour rather than individual criminal activity. The pressure of dealing effectively with collective behaviour in the criminal justice system puts a premium on efficiency. The justices were able to act as an initial sorting device, a type of pre-processing before the cases reached the magistrates. This then enabled the magistrates to deal with "mammoth" sittings or "marathon" sittings where hundreds of charges are listed for the one hearing. It is also noteworthy that the justices are not required to keep records of their special courts which were and are usually held in Bathurst Police Station. With the development of policing arrangements for Bathurst, the special courts formed a necessary bridge between the introduction of large scale policing operations and the work they generated and the more normal summary procedures of the judiciary.

The Institutionalisation of "Riot Policing Strategies"

As mentioned earlier in this paper, the establishment of the Tactical Response Group was integrally associated with attempts to maintain public order at the Bathurst Bike Race. One police officer who has been with the TRG since its inception, expressed the view that in fact it was the "riot" following the closure of the Stage Door Tavern in 1981 which was the precipitating event for the TRG's creation. Whatever the event there can be no doubt that the TRG (as with the Special Patrol Group in Britain) was an institutional policing response to public disorder. More specifically the TRG were originally conceived of as a purpose trained anti riot police squad.

If one examines the structure and operation of the TRG today, this singularity of operational purpose seems to have been discarded. In May of this year the TRG were assigned to insure the personal protection of Prince Phillip while he was within the jurisdiction. And this is not the first time the TRG has had responsibility for such protective duties. In June the TRG assisted the Special Weapons and Operations Squad (SWOS) in the detection and recapture of escaped convict Aubrey Burke. As a result of their now rather interdependent operational activities it has been noted that the TRG and SWOS should be merged.

Within the metropolitan area of Sydney the TRG is now called on to assist in the breaking of all major domestic siege situations. This involves a significant manpower

commitment from the 98 full time TRG officers in an area which had previously been the domain of general duties police.

More interesting still was the tour of duty done by certain permanent officers of the TRG (and some of the 300 TRG trained divisional officers) to the Orana region of Western N.S.W. between the 9th-11th November 1985. On the Saturday night the TRG carried out a street patrol of the country town of Wellington, in which they effected certain arrests. In a letter from the Mayor of Dubbo to the Premier Neville Wran (dated 11th November, 1985) the observation was made that "Recently the members of the TRG were in the City (of Dubbo) and their presence had a marked effect on the behaviour of people in the street". Perhaps not co-incidentally the use of the TRG was discussed at a meeting in Dubbo on 12th November where the Premier met with the local National Party member, a prominent ex-police officer and representatives of concerned citizen groups. The meeting was called to inform the government of local concern about a "wave of violent crime" which was said to be challenging the good order of the Orana region. On a somewhat smaller scale the TRG's street presence in these towns might be seen as similar to the incursion of the SPG on to the streets of Brixton just prior to the riots there in the summer of 1981.

Lord Scarman in his report on the Brixton disorders (1982, 4.75-4.80) was clearly critical of the tactic of introducing into a local community, riot police as a pro active attempt to diffuse the threat of public disorder. He saw this as a serious mistake which challenged the authority and effectiveness of local "beat" policemen, and had the potential to jeopardise accountability consultation and community policing strategies (See Benyon 1984, ch.8). This is particularly dangerous where certain crime and public order fears are associated with local racial tensions; tensions which police from outside the region may either not appreciate nor have to work beside.

The rapid expansion of police units which are trained as a paramilitary control force, with a "third force" perspective, has the potential to significantly re-direct the operational objectives of civil policing in situations well outside crisis challenges to public order. As with the SPG in Britain the TRG may be seen as coming of age as the principal police response to social "menaces" so diverse as vandalism, domestic disputes, racial unrest, industrial disputation, etc. (See Rollo, 1980). In anticipation of a growing need for such a third force, to control a greater diversity of civil unrest, the TRG and their strategies have been strengthened.

As the control function of the police is emphasised, so such operations as TRG policing, born out of limited "specific" instances of social disorder, become more widely institutionalised. The TRG is a clear example of the trend toward specialisation and centralisation of police operational functions. When combined with a reduction in formalised accountability and a concentration on pre-emptive policing, even the ideology of community based police responses to public disorder is clearly under challenge.

In addition the move toward professional elitism in policing, so obviously represented by the concept of tactical response policing, must diminish the significance of the general duties police officer when it comes to his/her responsibility to ensure civil order within his/her locality.

The inappropriate situation develops where such tactical response forces become responsible for (as Scarman forewarns) the preservation rather than the restoration of public order.

Conclusion

There is no doubt that the maintenance of civil order has always been a primary operational objective for organised policing agencies. However it is the way in which this concern is translated into policing strategies which has significantly altered in recent years.

Riot policing is initially justified as a rational response to a unique social menace. This was the case with the arguments in support of increasing the TRG involvement in crowd control at the Bathurst Bike race meetings. But the TRG has grown in numbers, in policing profile and in the nature of its control responsibilities. With its growth has arisen a more visible challenge to the ideology of community based police responses to public disorder. The "Peel image" of a non coercive civil police force ensuring public tranquility through a community condoned and unobtrusive police surveillance clearly has no place in tactical response police strategies.

The more that units like the TRG are deployed as the natural response to almost any perceived or actual challenge to public order, the less realistic and potent will be the ideology at the base of community policing. If the "third force" control strategy is institutionalised despite its distortion of such an ideology then the public's perception of civil policing must be revised.

Where ideology counts for little more than a device for state or police legitimacy, the formal legal rules and procedures which are said to regulate the states control process in a democratic sense cannot provide what Thompson (1977:267) refers to as "a medium within which other social conflicts (can be) fought out".

REFERENCES

- Benyon, J. (1984) 'The Policing Issues' in Benyon, J. (ed) *Scarman and After*. Pergamon Press, Oxford.
- Connell, R. W. and Irving, T. (1980) *Class Structure in Australian History*, Longman Cheshire, Melbourne.
- Cunneen, C. (1985) 'The Garrison State? Recent Changes in N.S.W. Policing'. *Arena* 71:67-89.
- Cunneen, C. and Findlay, M. (1986) 'The Function of the Criminal Sanction in Riot Control', *Aust. and N.Z. Journal of Criminology*. 19:3.
- Cunneen, C. (1986) 'Historical Roots of Conflict at Bathurst' unpublished conference paper.
- Donagrodski, A. (1977) 'Social Police and the Bureaucratic Elite: A Vision of Order in the Age of Reform' in Donagrodski, A. (ed) *Social Control in Nineteenth Century Britain*, Croom Helm, London.
- Hogg, R. (1984 (a)) 'N.S.W. Tactical Response Group' in Brown, D. (et al) (ed) 'Policing: Practices, Strategies, Accountability', *Alternative Criminology Journal*, Sydney.
- Hogg, R. (1984 (b)) 'Riots and Policing' in Findlay (et al) *Law and Disorder: A Critical Review of Riots and Social Control*, unpublished.
- Rollo, J. (1980) 'The Special Patrol Group' in Hain, P. (ed) *Policing the Police*, John Calder, London.
- Scarman, A. (1967) *Report of the Inquiry into the Brixton Disorders 10-12 April 1981*, Cmd 8427, H.M.S.O., London.
- Silver, A. (1967) 'The Demand for Order in a Civil Society' in Bordua, D. J. (ed) *The Police: Six Sociological Essays*, John Wiley and Sons, New York.
- Stubs, J. (1984) 'Bail Reform in N.S.W.' N.S.W. Bureau of Crime Statistics and Research, Sydney.
- Thompson, E. P. (1977) *Whigs and Hunters*, Peregrine, Harmondsworth.
- Wardlaw, G. (1986) 'Police Tactical Units' in Swanton, B. and Hannigan, G. (ed) *Police Source Book 2* Aust. Institute of Criminology.

Mark Findlay

I have to ask your indulgence in relation to this paper as you will note as you read through it that it is quite long and in some parts a little unwieldy. The reason for that is that it comes out of some three years of observations which were carried out by myself and a number of other individuals centered at Mitchell College in Bathurst of the Bathurst motorcycle race weekend and the confrontations between police and the crowd on the Saturday night. To some extent the paper concentrates on collective conflict in relation to those events and also tries to draw a wider brush across the questions of policing strategy in relation to public order. It is necessary I think to have a paper somewhat larger than normal because there are certain arguments which rest on our understanding of at least the historical development of the conflict at Bathurst, and to some extent that historical development is not easy to understand or to establish in the way that it has been reported in the past. As I say at the start of this paper, this paper will not debate whether the state faces a crisis in public order. I think that is a separate debate and one which perhaps will be taken up in questions.

As the title suggests I am concerned to expose the radicalisation of policing functions which is represented as arising in response to such a crisis. In short I wish to turn the discussion of public order crisis rather on its head by analysing the state's response to stereotypical social menace. But more than this I also want to identify the role of policing forces in the construction and justification of this radical response.

Policing agencies determine for the public what was the reality of the menace, particularly in the case of Bathurst, and what should be the ramifications for the nature of public order and policing that public order in the future.

The involvement of police agencies at all stages of a public disorder situation needs to be analysed as a dynamic process. Police so often become the focus of the riot themselves and their responses to public hostility directed against them will essentially affect the development of that hostility as much as it does the re-establishing of civil order.

Bearing this in mind the paper does concern itself with the police response to public disorder, but within the framework of the disorder itself and more broadly as a part of the definitional process which follows.

The specifics of police practice and its consequences will primarily be examined against the backdrop of public disorder which has arisen over the years at the Easter motorcycle races at Bathurst. It is interesting in fact that we have been able to do these observations at Bathurst because I do not know of any other situation where researchers can go to a place with a fair odds on chance that they will see a riot sometime with the period of the research that is to be carried out. Most riot research comes out of the good fortune or, whichever way you look at it bad fortune, of coincidentally being in a situation where a riot occurs. Also a lot of the riot research that you read, particularly the research that comes out of the riots in Britain in 1981 and the more recent riots, which perhaps has been the most constructive research done on public disorder in that form recently, is constructed out of second hand accounts or is the product of reflection on newspaper and television coverage of the event. We have had the opportunity to witness situations of public disorder, unique as they may be, in Bathurst from a first hand experience. I was fortunate enough in 1985 to spend a considerable amount of time behind the bulky form of Superintendent Freudenstein in the police compound during the evening of the Saturday night disturbance and was able through that to get a somewhat unique perspective on a police response to a riot situation.

Now the most important aspect of the police public order equation to be addressed in this paper is the functional significance of the public order menace for the radicalization of policing control strategies and I want to examine that in two ways.

Firstly, obviously in the specific ways that police respond to a certain type of public disorder and secondly, the ways these responses are institutionalised into the ongoing process of policing. I refer later to the evolution of the Tactical Response Group and to the evolution of the Special Courts in relation to Bathurst, and when I refer to policing in this paper policing should be seen in the widest sense. It relates to the elements of criminal justice, the criminal justice process, which have a control function.

It has been the common practice for policing agencies to simplify and stereotype what are certain conflict situations, in order to develop a response which seems achievable and understandable in a public sense. It is very important to remember when we are discussing policing public order that in fact it is not simply the behaviour itself but the definition of that behaviour which very clearly affects the type of response that comes about as a result of its occurrence.

In the second section of the paper I talk about policing public order in quite general terms and I make the point that there is nothing new in the conflicts which exist between police and the community in a contest for public space. In fact the very origination of certain police forces was based on the need, or the perceived need, of the state to control certain public leisure activities and that was quite clearly the operational reason for the Peel Police in Britain. I refer on page 27 to the interesting situation of looking at the history of the development of larrikinism in the 19th and 20th centuries, and it is a good example, in fact, of where this contest for public space can be perceived by the police not only as a contest for the re-establishing of public order but also a contest for re-establishing their authority.

It becomes interesting and it is very clear in the Bathurst situation that the immediate community under challenge is, in fact, the Police Force itself or those police officers who find themselves in a public order situation. They will be required to define what is good public order to be restored and they will also be required to form, if you like, the buffer between the forces that they consider to be challenging public order and the wider community which they consider that they represent or they protect. One of the great arguments that the police put forward for the establishment and the existence of the police compound at Bathurst is that without it the "Hill" area or the "Mountain" area could not properly be policed. In fact, in 1985 the experience was that the police were so constrained or confined in the position within which they could operate, that they could not assure the public order or the public safety of individuals very much out of the spotlight range of the lights that were shone on the compound. So even justifications for certain strategies such as those have to be seen to be impossible in the practical situation that you would address them within the conflict being observed.

On page 28 I introduced the first aspects of the Bathurst situation and make the point that if one ignores questions of temporal sequence like "Who caused that?", "What behaviour leads to what?" it is important to remember that one set of behaviours will necessarily affect the other, so that the debate can be quite unhelpful if one bogs down in asking "Who starts the riot?" and therefore who is responsible for it. One has to see the situation evolving as rapidly as it does in the Bathurst riot situation. The question is not really "Who starts the conflict?" but "How does the conflict develop?" and "How are the police and the crowd dynamically involved with each other's behaviour?"

Finally I say on page 28 that one must consider the factors that predispose police agencies to turn their attention to certain types of public order rather than others and one must look at that fairly critically. It becomes very clear that as you look at the historical development of the Bathurst conflict that the police have a symbolic investment in maintaining a certain level of control on the mountain and that has a lot

clear choice and a massive financial investment in maintaining order at what is rather an insignificant sporting event. The choice in maintaining control in Bathurst does not simply turn on the control of the behaviour of a crowd at a motor cycle race, or the protection of those individuals who are watching it, but it has a far more significant symbolic relevance, and therefore the choice of policing Bathurst and how Bathurst is policed is affected by that symbolic importance.

I will not take you through the historical section which starts on page 29 because in fact it would take up far too much time but I would simply refer to a couple of brief matters which you should be clear about when you are looking at the question of police strategies. If you look at the start of the section you will see that I refer to prior to the 1960's there were disorderly situations in Bathurst but these disorderly situations were not, in fact, directed against the police specifically, nor were they situations which the media seemed to concentrate on and make much of. Yet it would be wrong to presume that prior to the '60's in Bathurst there was no problem. In fact some of the oral historical accounts that we have received from police and from motor cyclists, or rather motor cycle enthusiasts who have gone to the mountain year in and year out, would argue that in fact some of the disturbances in the '50's were as active and as energetic as perhaps are the ones that we have confronted more recently. But the exercise of policing was quite a distinctly different one.

In the early '60's new dimensions in the conflict arose. The violent clashes appeared to be between the police and crowds of young people and these developed as a contest over public space: it was in public parks, it was outside pubs, it was in camping areas. In the '60's the pattern of public disorder was fairly sporadic, spontaneous and town centered, and this developed into a distinctly different operation in the '70's and the '80's.

The development of the "trouble-maker" hypothesis meant that the '60's police strategies became more concentrated and aggressive. There were more organised street patrols, there was crowd dispersal, there was organised regulation of liquor consumption and the like. 1964 is a turning point and I would like you to be very clear on that date. 1964, in fact, was the time the national press started talking about the "problem" at Bathurst; taking an interest in the riots, taking an interest in the crowd control, in fact talking about "riots" for the first time; and if your memory is as long as mine you will recall that Easter '64 was a period where there were significant clashes between youth groups and the police in parts of Great Britain and parts of the United States. It was the reflection of a certain climate at the time, and the policing that was carried out in the '60's around that period was very much consistent with the law and order mentality of the law and order projection which was coming from state politicians.

In 1966 the police numbers were greatly increased, special squads were introduced such as 21 Division and the whole conflict had taken on a very clear symbolic significance. By 1974 police levels were remaining fairly constant while the arrest rates had dropped right down below the pre-1960 figure.

In 1976 itself, however, the press reported a massive riot, made much of it and talked about the mobile caravan on the mountain being besieged by 200 crazed bikers. This was the start of the sort of centralization of the conflict on the mountain and in 1978 we had the appearance of the random fire arms checks. This went on to develop in the early 1980's with the creation of the police compound.

The paper would have gone on to discuss, in fact, three case studies of policing the spectacle in 1984, '85 and '86. 1984 is included. Unfortunately '85 and '86 were not.* There were some reservations expressed about whether a discussion of those matters might in fact affect certain committals and trials that are underway, or will be underway, in response to arrests made at that time and therefore I was persuaded to remove those sections. The unfortunate consequence of having to do this is that it

* These sections have now been included (see pages 34-38) Ed.

to do with the historical conflict that has developed there. Obviously the police make a unbalances the paper a little so you will have to take on trust what I say later on about policing strategies, and, believe me, that it is based on solid empirical observational evidence. Secondly, it to some extent detracts from the debate, and the debate about what actually happened at that time is one, that you will find if you look back on the media reporting, that is very unbalanced, distorted and biased. Fortunately the debate is slowly coming around to a more considered discussion of what happens, and the debate I would presume will be advanced by the matters that are raised in the trials that are to come.

So the three case studies would have appeared there. They in fact are to some extent summarised when I get on to commenting about policing strategies. There are three policing strategies that I would like to refer to — they are referred to on pages 38 and following, and they are the three policing strategies which were in fact effected in 1984, '85 and '86. 1984 was the non-interventionist or "soft" policing option and I go through what elements of that option are on page 38. The second is garrison or limited interventionist policing which is quite clearly the sort of policing that occurred in the riot in '85, the type of policing in which the TRG take a major role, and the third is the saturation type of policing which was carried out in '86, and as Scarman says in his report "Saturation policing will ultimately always have the effect of controlling public disorder if you have enough police to do the saturation policing". There is the interesting element of such strategies to which I refer on page 39, concerning the way in which they affect the nature of the event itself. If, in fact, you police the event to such an extent as it was in 1986 the very nature of the crowd behaviour, which has been traditional at Bathurst for so many years on the Friday and Saturday night quite distinctly changed because of the high profile involvement of the police. It was more orderly but it was also very, very different in terms of the types of behaviour that were engaged in.

I refer on page 40 to the issue of "community policing" where there are elements within the event itself which have a very strong vested interest in the successful operation and running of that event, and who have up until now abrogated their responsibilities in relation to that policing. The local community, in terms of the Chamber of Commerce or the Council, quite clearly have been happy to abrogate their responsibilities to the police, and the Motor Cycle Unions to some extent did the same although there have been attempts more recently to establish some liaison between the police and these organisations.

The policing of that event quite clearly is a policing strategy or situation which is kept in the hands of the formal policing agencies. That is becoming more and more a singular event which is policed by the police.

On page 40 I talk about what constrains police strategies or the creation of police strategies. It is obvious that the physical resources constrain them as do the internal strategies which exist in the Police Force itself, and it is interesting if you had the opportunity to read the materials which describe 1985, to see the dynamics of how the pressures coming from various elements within the policing organisation at Bathurst very much affected the nature of the policing, and of how the event panned out on the Saturday night.

On page 40 I talk about organisational specialization in policing public order and basically it is a discussion of the development of the TRG. I will not go into that in detail, and I should say that if it appears that I am singling out the TRG for criticism it is just that, in fact, they represent quite clearly a good example of the matters that I wanted to raise later in the paper concerning "institutionalization". I shall say nothing of that section except to say that it discusses the development of the TRG from a very specific organisation which had quite clear operational goals and was limited to the reestablishment of public order, to an organisation which is now quite pro-active and is

involved in its own conceptual sense in order maintenance. If you look back at what Scarman says about this sort of development in relation to the special patrol group in Britain he says it is an adverse development. He would argue that specialised tactical response type groups are groups to respond to a specific crisis. If one accords to the view that community policing is the right way to be going, such groups have no role in relation to order maintenance in a pro-active sense. I go through a discussion of the criticisms about the development of the TRG. The fact that there was not great public debate about that development is noted. I think you can look through these matters yourselves and consider the value or otherwise the various arguments for the existence of that sort of unit.

I would like very briefly to touch on the matters raised on page 44. This is where the empirical information was useful to us. It was interesting to look at features which affect the development of a police strategy and then certain hypotheses about the way police strategies will be influenced by certain of these elements. I go through the types of matters which will affect the selection of a police strategy on page 44 and then I look at certain hypotheses which are pretty broad and to some extent quite difficult to establish but they are the hypotheses that arise out of most of the debate that you find coming out of the discussion of why Bathurst occurred. Does Bathurst occur because there are too few police? Does it occur because there are too many police? Does it occur because of the type of police that we have? Does it occur because of the nature of the crowd? the charges that are laid? It is due to planning? Is it not due to planning? Even down to things like, is it due to the presence of the full moon, or the presence of fine weather?

The sad thing is that there has been very little empirical evidence up until this study that we have been involved in on which the police have been able to practically base strategies for crowd control. In fact, many of their strategies have been based on myth and misinformation. A good example of this is basing a strategy on planning as was the case in the late '70's. The police believed that in fact the riot occurred because people brought up weapons and whatever to the mountain and in fact prepared themselves for that sort of activity, and therefore the police set up road blocks as part of their strategy and in 1978 they collected a haul of weapons which was duly displayed to the press. In fact, the majority of weapons were the sort of things that you would find most motor cyclists would carry around with them on a sort of three day event like that. There was however a collection of firearms which was confiscated. We found out later through certain enquiries that most of the firearms were taken from people who were out on shooting parties without licences for those weapons, and, in fact, these individuals had nothing to do with the race whatsoever. Our observations indicated quite clearly to us that there was no planning at all. That is not to take away from the fact that the weaponry used against the police in 1985 was quite significant, and it quite clearly was, but in a camping area such as that with a lot of motor cycles around, a lot of empty cans and bottles and whatever, it does not take much cunning to be able to develop certain sorts of weapons which are quite significant.

I will briefly run through those hypotheses and you can look at them yourselves. Firstly, there is the hypothesis that *more police would reduce the amount of violence which occurred*. Assuming that change rates are any indication of crowd violence, it is worth noting that there are periods where policing numbers remained constant and there were variations in charge and arrest rates over these periods. I use charge and arrest rates as an indication of police activity. They are a clumsy monitor of that but they were the best we had. Secondly, *the trends in charge patterns are influenced by the introduction of specialised police divisions into policing exercises*. That is quite clearly the case if you look at what 21 division and the Drug Squad did over the periods that they were there. Thirdly, *changes in policing strategies will influence charge patterns*. That is quite a difficult one. It would appear that certain changes in police strategy will affect certain types of crowd behaviour. The clearest example of that is the major

policing strategy in Bathurst now — the establishment of the compound. Obviously the establishment of the compound has had a very distinct influence over the nature of Saturday night activities in Bathurst in terms of public disorder. No longer is the public disorder carried out in the streets and the parks at Bathurst, it is carried out about 50 metres around the police compound and the nature of that and the focus of that sort of event is obviously affected by that simple strategy.

The fourth thing is that *charge patterns are influenced by available legislation*. That quite clearly is the case. There was a useful and interesting example in 1982 when the police were making a great deal of noise about lacking powers in relation to controlling the crowd. The Premier promised the introduction of new riot legislation, and in fact I think it was someone quite wily either in the police prosecuting section or the Attorney-General's Department who put the police on to the existence of the old common law "affray" and "riot" charges which were vigorously used in 1985 and have resulted in the basis of the two most serious trials which were recently aborted at Darlinghurst.

Question number five is *were those years where the press reported the occurrence of a riot similar in terms of the arrest and charge evidence*. To some extent that was the case. However there were examples of years where there were a significant amount of arrests carried out and there was no media reporting of "riots". There is a whole new debate and a massive amount of information that we have on the media's involvement in the creation of the idea of the riot, but, in fact, we have found that it has been extraordinary that some years where there was no riot we are talking about riots. One year the local press talked about "defiling the begonias" in the begonia house in Bathurst which was an example of an outrageous event apparently and a real assault on community pride. That was about the worst thing that happened but that was considered to be a riot year, and then some years later when there was some really serious damage carried out there was no riot reported. I think it has a lot to do with which wire service they read or who writes the official report, or how many reporters you have there, or if all the reporters stay in Sydney and write it off what they imagined happened or what they get rung through to them from Bathurst base.

I will not go into a discussion of the Special Courts. All I would like to say that in the broad view the use of the courts presided over by the Justice of the Peace is illustrative of the options available to the State when dealing with larger scale social order problems. It demonstrates the type of strains put on the judicial system and the remedy made available when dealing with collective behaviour rather than individual criminal activity. The pressure of dealing effectively with collective behaviour in criminal justice system puts a premium on efficiency, and if you saw the amount, just the physical turnover of trials and matters dealt with, in the magistrates courts in Bathurst in the '70's and '80's you would have to give credit to the magistrate's stamina or the magistrate's ability to process massive numbers of charges as he did. We give some figures earlier on the extraordinary numbers that are processed but within the control framework selected obviously there is no alternative. If there is a massive amount of arrests carried out over that weekend then the court system has to be adjusted in some way to be able to process them quickly.

My conclusion is very simply this: I do not attack the necessity for the existence of tactical response type policing for certain public order situations. I think that is another debate entirely but what I am interested in is the fact that tactical response type groups such as the TRG, and SPG have a self-generating potential. They in fact might be set up for very specific problems of public disorder and they generate through their own existence and through the concerns that are expressed around the development of certain public order situations, a momentum whereby they find themselves policing a quite extraordinary collection of other situations. I could refer you to that example that is on page 52 which relates to the TRGs involvement in the Orana crime crisis or the crime concern which was much discussed in 1985. It is interesting to see how the

TRG appeared at a time prior to certain meetings which were carried out between the local council and the Premier and it was almost as if their presence in the area justified the discussion of a crisis, where obviously the evidence was not there.

If we are going to be in a situation where we have a belief in the general notion of community based policing and yet we set up special squads such as the TRG, by so doing we admit that a certain level of consensus has broken down past the normal levels of policing practice. We find that we have one problem on our hands the solution for which seems to generate a new and more widely applied policing strategy, one which becomes very much self-fulfilling and self-generating to a point where we do not really have the opportunity to continually analyse certain matters prior to their institutionalization. As Thompson says and I quote from the last page of the paper collective conflict is no longer seen as "a medium within which other social conflicts (can be) fought out" (page 53). That environment is not allowed and not permitted because of the concentration on tactical response policing. Can we on the one hand acknowledge the ideology of community based policing and see along with it the rapid development of this sort of specialised centralised elite tactical response type policing to questions of social order?

STRUCTURING THE POLICE FORCE TO DEAL WITH PUBLIC DISORDER

Dr Grant Wardlaw

Senior Criminologist, Australian Institute of Criminology

The quality of policing is the litmus test of a political system's character: the ultimate criticism of a regime is to label it a police state. And the litmus test of quality of a police force is its handling of crowds and riots: the brutality or civility with which public order is maintained reflects the success or failure of the myriad daily encounters between citizenry and police.¹

The development in recent years of tactical units in Australian police forces, largely in response to a perceived need to be able to cope better with instances of public disorder, has largely gone undebated but could have a major influence on the style of policing in this country. The emergence of units specialising in riot control methods raises a number of issues. Does it signify, as some claim, a convergence between European-style policing, which has always been overtly and explicitly an instrument of state policy, and British-style policing, which is claimed to be based on the concepts of consent, impartiality and the independence of the office of constable? Does the emergence of specialised public order formations in Australia presage the eventual creation of a paramilitary "third force" which would stand between the police and the armed forces? Indeed, do the scale and incidence of public order problems suggest the need for such a force? There seem to be many countries which provide models. In fact only the Federal Republic of Germany possesses a true "third force" — the Federal Border Guard — which is neither part of the police nor the armed forces, but is an independent force under the control of the Federal Minister of the Interior. It is a para-military organisation, structured on military lines, with sophisticated weaponry. Its members live in barracks, are trained (amongst other things, such as counter-terrorism) in crowd control techniques and can be used by the Lander (State) police forces as a police reserve.

The Lander police forces have riot control units which are typical of the European organisations commonly referred to as "third forces". Each force has a riot section called the *Bereitschaftspolizei* through which all police recruits pass and spend their first two years of service. It is important to note however that these units, and those such as the French Republican Safety Companies (CRS), the Belgian Gendarmerie riot formations and the Japanese *Kidotai* are integral parts of *police* organisations, albeit on a scale and style quite alien to Australian policing.

Nevertheless the existence of units such as the Tactical Response Group (TRG) in New South Wales, the Special Tasks and Rescue (STAR) Force in South Australia, and similar units other forces, have raised fears that police in Australia have introduced a "harder" element into policing public order which is reminiscent of European-style policing (complete with images of the excesses of the CRS in controlling crowds in (France) and which undermines traditional forms of policing. Such debate as there has been on this issue has been polarised unnecessarily by the analysis of public order problems in an excessively ideological manner.

The tone of much criticism of public order policing methods in Australia implies that the police are indulging in a conspiracy to prop up a failing capitalist state by the introduction by stealth of paramilitary structures whose real intention is to be used to subjugate those who will surely become disaffected as the contradictions of capitalism become more apparent. It seems to deny that the state has a duty to protect public

1. Robert Reiner, "Forces of Disorder: How the Police Control 'Riots'," *New Society*, 1980, 10 April, v. 52, no. 914, p.51.

order, assuming instead that the causes of disorder are always to be found in the economic or social policies of the ruling elite and that attempts to maintain order are little more than the attempts of the elite to maintain their position of privilege in an essentially unjust system. By arguing that concepts such as the consent to be policed under attack, critics overlook the fact that policing by consent has never meant policing with complete acquiescence. Arguments that the police are becoming too militaristic are often couched in terms which indicate that "heavy" elements of policing strategy can never have any legitimacy. There seems little effort on the part of critics to suggest how police *should* behave when confronted by angry mobs.

For their part, the police are generally extremely unwilling to discuss the possibility that their philosophy of public order policing may contribute to the problems they claim to face. It is easy to sympathise with the anxieties of front-line police who have little time for the argument that unprotected, unarmed police act as a calming influence on a crowd. It is hard to sustain such a view if one is under attack from a petrol-bomb throwing individuals. As one publication has pointed out, "to carry this argument (that unprotected, unarmed police should always be used to police disorder because they will gain most public sympathy and support) to its logical extreme, it would be even better to have masses of injured officers, while a few attractive policewomen being killed would have the maximum effect".² It is harder to understand why police are so rigid in believing that their particular version of hard policing is the only real option open to them. On the whole, they tend to take a single-minded and unimaginative approach to public order problems which does produce solutions which may have undesirable consequences both for the outcome of public order confrontations and for the nature and style of policing generally. But I believe that these negative effects are a result of a failure of analysis and public debate far more than they are a result of a conspiracy to introduce a repressive element into policing as the servant of the ruling government.

Finding the Balance in Public Order Policing

The analysis of how best to structure the police to deal with the public order depends, then, in my view, on recognising both that there does have to be a response to disorder and that the response may act to exacerbate the situation. In other words, both the police and their critics are partially correct. Clearly, the police cannot refuse to intervene in public order situations and must therefore develop policy and procedures to deal with them. On the other hand, some ways of conceptualising the problems may produce approaches which not only fail to control disorder, but also change the nature of policing generally in undesirable ways.

One commentator who recognises the two-sided nature of public order is Robert Reiner. he notes that:

The paradox of policing is that while the ultimate police resource is legitimate force, policing is more successful the less it has to be resorted to. But minimal force does not mean no force. How far force is necessary is only partly a function of police skill in defusing potentially violent confrontations. It also depends on the amount of violence offered against police.³

As Reiner goes on to point out there are many potential situations in which a "non-militaristic" response (meaning a response characterised by the non-use of police intelligence resources, a low-level of training in crowd-control tactics, lack of central

2. Kenneth Sloan, *Public Order and the Police* (Police Review Publishing Company, London, nd), p.22.

3. Robert Reiner, 'Is Britain Turning Into a Police State?', *New Society*, 1984, 2 August, v. 69, no. 1128, p.54.

coordination and control, and absence of offensive, and possibly defensive equipment) may in fact raise the level of injury and damage that ensues.⁴ In some situations, if the police do not turn out in protective equipment their own levels of injury may be unacceptably high. In addition, having officers confront demonstrators without the advantage of having had training in public order duties, without adequate intelligence, and without proper command and control is likely to increase the probability of police violence as discipline breaks down, as control is lost, and as inexperience and, often, fear take their toll. It follows that if violence needs to be used by the police — and I believe that we must accept that it sometimes does need to be — it must be used lawfully, competently and efficiently. For this to occur, police need training and organisation for public order duties. We cannot yearn for some halcyon period during which a mass of smiling constables linked arms and charmed crowds out of any violent intent. These days never existed and neither did a period during which policing was characterised only by “soft” methods. Indeed, as Lord Scarman argued in his report on the Brixton disorders in London in 1981, “policing is . . . too complex a job to be viewed in terms of simplistic dichotomy between ‘hard’ and ‘soft’ policing”.⁵ It is not that “hard” policing styles are inappropriate that is important. They clearly have a place. The real issue is that of the balance between “hard” and “soft” styles — and who decides what that balance shall be.

The question of finding the appropriate balance, both generally and with reference to particular situations, is in many ways the most important issue facing contemporary police. It is intertwined with a number of other questions some of which need public debate and others of which need a more technical assessment. A fundamental issue is that of reconciling contending rights in public order situations. To even begin this difficult task means setting out some basic assumptions about the permissible limits of, for example, protest, publicly debating them, and ensuring that they are given prominence in police training and operational philosophies. At a recent seminar on the rights of peaceful protest held in Canberra under the auspices of the Human Rights Commission I suggested that something along the following lines might be a possible set of such assumptions.

Firstly, I held it as axiomatic that a democratic society must provide its citizens meaningful opportunities for the expression of political points of view. To be meaningful, the right to free speech must include the right to organise and assemble for the purpose of expressing either verbally or symbolically dissident opinions. We must also recognise, however, that the essence of democracy is balanced and that the right to protest is not an absolute or paramount one in the sense that it cannot be assigned antecedent value over all other rights.

The goal of peace and social order claims an important place in a democratic state as does the protection of the rights of those against whom a protest is made. It follows, then, that right to protest does not extend to the point where any political message or any tactic of protest is tolerable. The actual boundaries, of course, are difficult to define and are the subject of some contention, but in principle some limitations on free speech and protest are not inconsistent with democratic forms. Thus, in some circumstances, the punishment of direct verbal incitement to commit illegal acts can be seen as a legitimate response of the state rather than attack on free speech. Protest

-
4. One of the difficulties of sensible discussion about methods of public order policing is the imprecision with which words such as “militaristic” or “paramilitary” are used. Clearly the dichotomy between different styles of policing is not clear or obvious as the words themselves might at first suggest. Thus, for example, extensive planning and training, command and control arrangements, and deployment of large numbers of police personnel are said to be features of a paramilitary style. They are also features of traditional policing arrangements, as are tactics such as cordoning, wedge formations, etc. The major difference seems to be in the level of protective equipment and weaponry which “modern” public order units possess.
 5. Lord Scarman, *The Brixton Disorders, 10-12 April 1981* (HMSO, London, 1981), p.88.

which involves violence or massive disruption of community life justifies the civil authorities in taking counter action. Such action can, of course, be repressive or constitute an over-reaction, but the mere fact of taking action does not itself indicate the emergence of an intolerant state.

Finally, of course, the state has a responsibility to protect the rights of those against whom protest is directed, especially if the objective of the protest is to disrupt assemblies of that group and to prevent its members from expressing *their* views. Once again, the essence is balance and the police, in particular, have a difficult but vital function to perform in ensuring as much as possible that each group has the opportunity to express its views. But the responsibility lies not only with them but with those who would protest. I always find it ironic and rather sad that groups which frequently argue loudly for free speech are often in the forefront of those whose tactics are aimed at preventing speakers with whose views they are at extreme odds from addressing public meetings. I regard it as entirely legitimate to protest outside the venue and to engage the speaker in debate. But it is inconsistent with the right of *all* to free speech to prevent access to the venue to those who wish to attend or to prevent the speaker from putting his or her point of view.

These considerations are summed up nicely by Lewis and Corsi who remind us that:

... in a very real sense, the rights of dissidents, their opponents, and the general public are always interdependent and potentially in opposition. Because of this, sole concentration on any one (or any one combination) of these values conceivably negates the remaining rights. For example, the most efficient and effective procedure (at least in the short run) for preserving public peace might be the prohibition of all forms of dissident activity. Conversely, dissidents may justify any form of behaviour because of its alleged contribution to the achievement of a morally higher goal. Ultimately, however, these rights cannot be defined in isolation because each derive their justification from the context in which they occur and that context always includes the rights of other groups.⁶

Although accepting principles such as the above should influence the style and outcome of police behaviour to some extent, there are still a number of more technical questions which need attention. For example, how can standards of police conduct be maintained in the heated, fluid, ambiguous and sometimes dangerous circumstances which may often characterise public order situations? Whilst adequate mechanisms for accountability and the promotion of professionalism within the police service undoubtedly play a part, perhaps the greatest contribution can be made by extensive training and proper command and control systems. These, in turn, have been amongst the major justifications for the formation of specialised public order units trained especially to deal with crowds and rehearsed in responding to a sophisticated system of command. In turn again, these are some of the facets of contemporary public order policing which are the subject of some criticism. It seems to me, though, that these are perfectly reasonable, indeed desirable, developments. The problem lies, then, not in extensive training, the development of police intelligence systems, and the evolution of more centralised command and control, but rather in the content of training, the limits placed on intelligence gathering and the extent to which public order methods flow over into more general policing.

The logically fundamental problem in assessing public order structures and techniques is that of accountability. Who decides on these things and how? In Australia, the decisions have been made almost entirely by police, without public debate, without

6. Ralph G. Lewis and Jerome R. Corsi, "Government Responses to Protest and Disorder", in E. C. Viano and J. H. Reiman (eds), *The Police in Society* (Lexington Books, Lexington, Mass, 1975), p. 174.

legislative guidance and usually in an atmosphere of crisis following some particular incident. It is this crisis reaction, usually operating in the context of sensationalistic media coverage of public order problems which has produced the deficiencies I would see in current structures. This is particularly so because media treatments are excessively simplistic, tending not only to exaggerate the extent or importance of violence and destruction, but also to scapegoat particular groups (usually socially marginal or minority ones). The result is a natural tendency towards simple solutions which tend, in the main, to be those involving "hard" policing methods. There is little evidence that police (or for that matter politicians or the general public) give much thought to whether or not the situations are more complex or the solutions employed are potentially counter-productive.

Nevertheless, it is important to understand that the actual impetus for the formation of tactical units is both real and imagined increases in violence — not a conspiracy of oppression. There is no sense in condemning police for being heavy-handed on the basis of an argument which assumes that police have deliberately set out to exert a harder line in political and industrial contexts. This ignores the level of opposition and violence offered against the police. Police can easily respond to criticisms that they are developing too paramilitary a style by claiming that they never wanted riot gear and paramilitary formations, but that this was forced upon them by the rising level of violence with which they are confronted at demonstrations, sporting events and industrial disputes. The extent to which these things have actually worsened — and who is to blame — is of course a matter of some dispute, but often the police use it as a device to deflect attention from and deny legitimacy to claims that tactical units (whatever the justification for their formation) can in fact be misused in practice — that their tactics can be, and sometimes are, used inappropriately, in an inflammatory manner and, indeed, brutally. The typical reaction to such claims is to issue bland assurances that all is well and to question the motivations, politics or intelligence of the critic. Alternatively, the problem is conceptualised as being simply a technical one which, by definition, only police have the knowledge and expertise to analyse and come up with solutions too.

We ought not, however, let police decide on structures for public order maintenance in isolation. We need much more informed debate on the nature of public order problems in Australia and of the structures and techniques which should be available to confront them. As I have argued elsewhere,⁷ much more consideration needs to be given to such questions as whether or not full-time, specialised public order units are necessary in Australia. The danger is very real that having such units in a country with relatively low levels of serious disorder will lead to their employment in situations which do not warrant a highly technological approach to order control. There is a very real sense in which once police forces possess such full-time units they have to employ them to justify their continued existence. This is not to say that some form of public order unit should not exist. As I said at the outset, we must recognise the reality that police will face, from time-to-time, situations of public disorder which necessitate their deployment with protective equipment and, on occasion, with the technology to break up a violent crowd intent on doing damage or breaking the law in a non-trivial manner. But the frequency of such confrontations will be rare in Australia for the foreseeable future. To deal with such incidents police need a trained reserve, but it should be part-time. Furthermore, general duties police should be given more training in the basic constabulary methods of crowd control in the hope that more confrontationist techniques can be held in reserve and employed on fewer occasions.

7. Grant Wardlaw, "Police Tactical Units" in B. Swanton, G. Hannigan and T. Psaila (eds), *Police Source Book 2* (Australian Institute of Criminology, Canberra, 1986).

Recent experience in Brixton has shown the value in this basic approach.⁸ The Chief Inspector responsible for organising public order operations in this tense area of London argues that it is important not to have "split-level" policing where specialised response units are the major resource to be utilised to deal with public order situations. First, he argues that bringing in outside units produces more tension and alienation in an already difficult situation, particularly if the units are deployed prior to any serious disorder occurring. Second, it is believed that anonymity in a crowd is a major factor influencing whether or not riotous behaviour will emerge. The only way to ensure that anonymity is not possible (and to identify outsiders who may in some small number of instances stir up trouble) is to have local police who know the community take the primary responsibility for public order control. The Brixton scheme stresses the need for being able to move from "normal" to "high tension" policing very rapidly, with the intention being for local officers to positively occupy a trouble spot. Any reinforcements from outside are initially to be used on station duties, thus releasing local people for street duties. It is only if major disorder involving violence or destruction of property occurs that outside help will be deployed on the streets, and only after a full and careful briefing. Such an approach, together with a reinvigorated neighbourhood policing scheme and new forms of community consultation seem to be paying dividends in an area which was the focus of some of the worst disturbances in 1981.

At least part of the motivation for increased attention to public order matters in Australian police forces seems to have been to learn lessons from their British counterparts, so that they don't find themselves similarly unprepared for outbreaks of serious disorder as was the case in Britain in 1981. We ought then, to pay particular attention to the lessons learnt about the friction caused by deploying riot-trained special units on saturation policing tasks aimed at general crime. Such tactics are generally accepted as having contributed to at least some of the friction which eventually resulted in the riots. They have appeal to both police and politicians who want to feel that something "positive" is being done to "clean up" a problem in a particular area. However, such tactics may not always be as successful as they sometimes appear to be. There is a tendency for the criminal behaviour merely to be displaced to envioning locations. Of more importance, however, is the fact the specialised units tend to adopt more aggressive styles than general police. One of the lessons of the British experience is that in such situations, if disorder occurs, police may not be merely *victims* of disorder (for example, because they represent authority) but rather *active participants* because of their own behaviour. Furthermore, deployment of such units on ordinary police duties can act to undermine the efficacy of the new community policing initiatives. In Australia, the use of tactical units as street patrol forces seems to be increasing both as a way of employing the units to keep them busy and, interestingly, as a means of giving them "ordinary" policing responsibilities in an effort to *prevent* them from becoming too aggressive. It is a development I consider to be generally undesirable and should be subject to much greater scrutiny and debate.

Politicisation of the Police

A development which is of primary importance in structuring police forces to deal with public order is the increasing political role played by police. The difficulty with an overt political role, especially as represented by police statements viewing themselves as the "beleagured last line of defence against the destruction of traditional social values and institutions against attack",⁹ is that police are seen to *define* social problems

8. Tony Judge, "Brixton Finds the Answer", *Police Magazine of the Police Federation*, 1985, v. 18, no. 4, pp. 8-10

9. Clive Unsworth, "The Riots of 1981: Popular Violence and the Politics of Law and Order", *Journal of Law and Society*, 1982, v. 9, no. 1, p.68.

and their solutions, and *not* merely act, as they claim, as neutral enforcers of the law. By entering the arena in this way, police may seem to be (and, indeed, may be) the front-line in an authoritarian reaction to some situation. The police constantly remind us that, whatever difficulties may arise over differing ideological interpretations of public order matters, the law and society do draw some line which they expect the police to hold. But they find it increasingly difficult to convince large sections of the community of their impartiality when they themselves are "actively involved in formulating official views which are publicly hostile (for example) to the rights of workers to strike or picket".¹⁰ It must be understood that a "police" view is not a purely neutral, "expert" or "technical" one. It is just as political as any other view. Indeed, many police statements act as part of "an ideological force, mobilizing public opinion behind a very special and particular set of "Law and Order" policies".¹¹ Much of our tradition of policing is based on having as far as possible a separation between *making* and *enforcing* the law — and it is a separation we should strive to maintain. As Hall reminds us, the difficulty for the police is that they:

... cannot both constitute a powerful crusading part of the "Law and Order" lobby and maintain for long the semblance of social and political impartiality. They cannot both claim to "police by consent" and be so actively and publicly involved in constructing public opinion, in shaping consent and producing it, in its most traditionalist and disciplinary form.¹²

Probably nowhere is the police intrusion into the public political arena more obvious than in debates over public order, and it is precisely here that an undermining of the notion of impartial enforcement of the law is most damaging. I believe that police need to reconsider very carefully their proper role in such debates.

Concepts of Policing

The notions of consent, independence of constables, impartiality, and accountability are central to much discussion of public order policing and the structures and principles which should be mobilised to cope with it. Much of the use of these terms, however, is confused, subject to partial interpretation and often reflective more of ideology than reality. In deciding on how to police public disorder, however, it is clearly important to understand how public order duties fit into police work generally and how they relate to the so-called central features of our system of policing. In this section of the paper, I want to explore these links with reference to an important series of articles by Dr P.A. Waddington which has appeared in *Police. The Magazine of the Police Federation* over the past two or three years.

Waddington takes as his starting point the now well-recognised (by academics, if not the general public) fact that dealing with public disorder and minor crimes with an element of disorder (such as vandalism) is a major part of every police officer's role. Although the focus in police work has traditionally been on major crime-fighting, we know that the reality is quite different. The fact that police themselves have emphasised the crime-fighting ethos and that many, if not most, recruits are attracted to the job by the opportunity to fight crime, has resulted in an under-emphasis on the public order role. Thus portrayals of police work seldom mention it (with major exceptions in books such as those by Joseph Wambaugh),¹³ discussions of everyday policing amongst police on duty focus on other areas,¹⁴ it does not feature prominently in

10. Stuart Hall, *Drifting Into a Law and Order Society* (The Cobden Trust, London, 1980), p. 12.

11. *Ibid.* p.16

12. *Ibid.* pp. 16-17.

13. See, for example, Joseph Wambaugh, *The Blue Knight* (Little, Brown and Co., Boston, 1972); *The New Centurions* (Dell, New York, 1979); *Lines and Shadows* (J. Curley, New York, 1985).

14. See the observations about police conversations on duty in Simon Holdaway, *Inside the British Police: A Force at Work* (Basil Blackwell, Oxford, 1983).

general police training, and it is not assigned high political or internal priority. Furthermore, because the reality and importance of general public order duties are given little formal recognition, there is perceived to be a great discontinuity between minor public order tasks and the problems associated with handling masses of people which normally fall under the heading of "public order".

The reality is, of course, that most police time is spent on minor public order duties, but that performance is less than optimal because they do not fit in with the police officer's view of what constitutes "real" police work and because the emphasis in training has been in law enforcement, not order maintenance. It is important to remember, too, that the events themselves are minor only in the sense that they constitute minor offences. In fact, they can cause more fear, distress or deterioration in quality of life (particularly amongst vulnerable groups such as the elderly) than do major crimes which grab the headlines but do not directly affect the lives of so many individuals.

As noted above, an important part of this situation is that police themselves tend to downgrade the importance of order maintenance duties. Complaints are often heard about the undesirability of becoming involved with "social work". Offenders are not likely to be major ones, so there is little likelihood of a "good" arrest. But to the community, the order maintenance role of police is vitally important. If police gave more recognition and training to this aspect of their work, they might prevent some of these behaviours from developing into more serious public order problems or provide the sort of sound background experience relevant to dealing more effectively and less abrasively (and with less help from dehumanising or alienating technology) with the more serious forms of disorder.

However, as Waddington notes:

For these tasks to receive the recognition that they deserve, a "philosophy of policing" needs to be formulated which will challenge the "cops and robbers" image and receive public endorsement.¹⁵

Waddington argues that this philosophy must go beyond the current generalised conceptions of community policing or earlier notions of police as a *service* rather than *force*, to recognise that there is no discontinuity between the crime-fighting and service roles of police. What is needed is a recognition that what is common to all police work is the exercise of authority. The police are the principal holders of legitimate coercion in our civil society. It is discretion in the exercise of this authority which prevents the police from being oppressive.¹⁶ In the British police tradition, discretion is formally recognised in the doctrine of the independence of the office of constable. But whilst publicly acknowledged in this form, discretion is not often publicly discussed and is sometimes publicly denied by police who claim for one reason or another that they have no choice but to enforce the law. What is required is a re-assertion of the reality of, indeed the necessity for, police discretion. This is particularly important in public order policing where keeping the peace may sometimes require the exercise of the discretion not to enforce the law strictly. Being able to exercise discretion implies having sufficient powers to be able to cope with many contingencies. In turn, allowing the police to have these powers means that we must trust them and it is in this context that discussion of accountability and avenues of satisfactorily resolving complaints about the abuse or inappropriate use of police powers become central to the debate about public order policing.

15. P. A. Waddington, "The 'Acceptable Face' of Policing", *Police Magazine of the Police Federation*, 1983, v. 16, no. 3, p. 30.

16. Although, on occasion, it is false claims that they are *unable* to exercise discretion which may signify an oppressive application of the law.

Waddington argues¹⁷ that it is what the police *are* rather than what they *do* that is the crucial and unifying element in their role. Put simply we must recognise that the police are the representatives of the authority of the state. In our society, that authority is contained in the law. There is, therefore, a very real sense in which police are right in claiming, as they often do when they are accused by some section of the community of enforcing the law in a heavy-handed manner, that they are merely the impartial enforcers of the law. But in order to have moral authority as well as legal authority, police have to step back from the law and not be involved politically in formulating it. To re-emphasise what I said earlier, police involvement in making the law undermines any pretence of impartiality in enforcing it. That is why I view with such suspicion the increasing political role of police.

The notion of being responsible to the law, rather than directly to government, carries with it implications for the concept of consent upon which our policing is said to be based. This concept is one which has been uncritically accepted in discussions of policing, but which turns out to be fairly ambiguous upon closer examination. Clearly, policing by consent does not mean policing with the consent of those against whom police action is taken. From whom, then, is the consent obtained? Those who favour some form of local accountability would say that consent comes from the local community and that "acting on their behalf, the police should pay attention to, *and be circumscribed by*, the values and norms of that community"¹⁸ (emphasis added). However, public order situations clearly expose the unworkable nature of this arrangement. Often such situations involve one community in conflict with another. From which should consent be sought? Such a decision puts the police in an unenviable position. Either they are trapped between competing demands or they end up being guided by their own values (which often will coincide with those of one side of the conflict, thus introducing a partisan element).

According to Waddington, "the 'consent' that the police must legitimately seek is, then, not to be found in parochial, but in universal standards of what is acceptable or unacceptable conduct, such as those expressed in law".¹⁹ For all its imperfections, it is this recourse to the law which is so important to our way of policing. What it does, though, is to place a very heavy burden on our elected parliamentary representatives to avoid passing legislation which is socially divisive — nevertheless it is on politicians, not police, that the burden should rest. It seems that our approach to public order, with its concentration on criticisms of police actions, is a bit lopsided. Much more attention needs to be paid to the contribution of government policy to public order problems and to ways of reducing it. As Reiner notes:

The fact is that the police themselves are currently trying to restore their democratic legitimacy. But their major problem is government policy. "Community policing" cannot flourish in the face of policies which relentlessly divide the community.²⁰

The recourse to the standards of the law, however, does mean that in public order situations, the application of those standards against the behaviour of particular groups inevitably involves enforcing the law against some peoples' will and without their consent. It is here that the importance of discretion and difficulties with concepts of local accountability and consent become apparent. The exercise of discretion must be with reference to universal principles, however difficult in practice this may be. Certainly, discretion should not mean complying with sectional interests.

17. P. A. Waddington, "Whose Consent?", *Police Magazine of the Police Federation*, 1984, v. 16, no. 10, p. 30

18. *ibid.*, p. 28.

19. *ibid.*,

20. Reiner, *op. cit.*, note 3, p. 56.

Much of the recent debate in the United Kingdom over local accountability (essentially, whether or not Police Authorities should have the power to determine overall police policy for their areas) has focused on attempts of left-wing dominated councils and authorities to gain more control over policing and on fears that this would result in a greater left-wing (and therefore, "bad") influence on police matters. Those who identify with the left and who think this a good idea should ponder the reverse situation. Imagine a right-wing authority insisting on a vigorous "law and order" approach to policing or wanting the police to take a "hard line" against illegal immigrants. Obviously, either situation would polarise the community, result in either ineffective or discriminatory policing, and further politicise the police. This form of accountability will serve eventually to totally undermine the legitimacy of the police. As Waddington argues cogently:

Discretion should be exercised with reference to universal principles, such as the need to maintain order and protect civil rights (especially of the innocent and vulnerable), however much this may offend certain sections of society who may wish for example, to create mayhem or violate civil rights by intimidating others. According to such universal principles it may, on some occasions, be decided that least harm is done by not enforcing the law than by enforcing it. Whilst no one pretends that such decisions are easy . . . they surely must be considered according to logically defensible principles rather than current, and local, popularity.²¹

In the final analysis, except in the sense that the people consent to be policed when they fail to resist police efforts to direct their behaviour, policing is not by consent but by the exercise of legitimate authority. This reality is made obvious in the control of public order. Waddington is correct in saying that public order occasions make the right to use coercive force (which underlies police authority and remains latent for much of the time) more manifest. This is so particularly in instances of mass public disorder which attempt "to usurp the ultimate coercion Mass public disorder in pursuit of an organised interest is . . . one of the most fundamental challenges any state must face. For those of us who believe that liberal Parliamentary democracy, for all its faults, is the best available system of government, it is essential that in such contests it is the agents of the state who triumph".²² The essential question is not whether or not the police should take action, but now.

Conclusion

I have argued that much of the debate about public order in Australia has been unproductive because critics of police have often failed to appreciate the practical difficulties facing police in public order situations and because their ideological blinkers have led them to the, in my view false, belief that the introduction of a technological and specialised approach to public order is part of some conspiracy to prop up a repressive and failing capitalist system. For their part, the police find it easy to dismiss these claims as the ravings of the "loony left" and rather arrogantly go on the same course without pondering the accuracy of their views. The difficulty, as I see it, is that there is much substance in the claims of the critics that public order control is moving in some undesirable directions in this country, even if I disagree with some of their theoretical views. We certainly need much more public debate about the structures and philosophies of public order. These are *not* merely technical matters and are too important to be left to the police alone. Indeed one of the sources of the limitations or negative impacts of current public order maintenance is that the police have seen it purely as a technical problem to be solved principally with reference to technology and tactics. Unfortunately, those who engage the police in debate fail too to

21. Waddington, *op. cit.*, note 17, p. 30.

22. *ibid.*

move away from these matters. If the debate is going to produce anything really worthwhile, it will have to focus first on principles and philosophies of policing. This is why I see attempts such as Waddington's to re-analyse concepts of policing as being so important. We can never really satisfactorily resolve the issue of how to police public order until we resolve the issue of what sort of police this society wants.

To leave the last word to Waddington:

It is easier to shrink away from attempting to find solutions to truly difficult problems and concern oneself with the more obvious manifestations — in other contexts this would be recognised as "scapegoating".²³

23. P. A. Waddington, "Bring on the NUMskulls", *Police Magazine of the Police Federation*, 1985, v. 18, no. 3, p. 40

John Parnell, S.M.

Public order and the peace are inseparable concepts, and major privileges of our society. The safeguard for each is the law, principally the common law. Hence, the epithets to explain the two concepts come in the main not from parliament but from the courts and academics . . . tranquility, safety, normalcy.

The executive arm of the law is a police force, a body of constables banded together under the operational control of a constable/Commissioner (at the direction of the executive). All constables have an individual discretion as to the execution of the law.

The exception is in the area of the peace where the law seems to be that certain failures to act may be indictable misfeasance. This presents a dilemma for all constables. Nevertheless there is a clear obligation on the Parliaments to legislate to resolve this dilemma of the constable. I exempt the Commonwealth from these remarks because in the *Crimes Act* 1914 and the 1971 legislation there was some attempt to resolve the dilemma.

There are two cases which really highlight this dilemma. They are both English cases. One¹ involved the situation where the Chief Constable posted his men to watch the confrontation between bulldozers and environmentalists. The bulldozing authority attempted to have the courts force the Chief Constable to do something. The courts in their civil jurisdiction said "No. He has got a discretion and furthermore this is a self-help society", and nothing happened. About the same time² another constable saw a brawl or a fight going on outside a picture show, passed to the other side of the road and pressed on. A complaint against him was made to the Director of Public Prosecutions who indicted him for some old common law misdemeanour and he went to gaol for two years. These are the two extremes but nevertheless the problem for constables is in the middle, and the Parliament has just not faced up to its responsibilities.

Two of the writers have expressed concern over a present trend towards militaristic policing. Whilst it is difficult to see any reversion to community policing in modern days, nevertheless the concept of our civil police must be preserved.

The judiciary, the legal profession and academia must share some of the blame for any militaristic trend by their continued references imputing a corporate role to the actions of individual constables, e.g. "the police case" . . . "the officer in charge of the case" etc. All such references could impute a license to centralise and militarise and it is not surprising that the public forms a false impression of our concept of civil policing. Moreover third forces outside our present civil forces are proscribed by the Constitution.

The three bodies above have a duty to take the lead in ensuring public awareness in this regard.

1. *R v. Chief Constable of Devon & Cornwall Ex parte The Central Electricity Generating Board*. "The Times" 21/10/81.

2. *R v. Dytham* 1979 Crim. Law Rev. 666.

TOWARDS POLICING A BANANA REPUBLIC: PRESENT TRENDS AND A SUGGESTED ANTIDOTE

Gill Boehringer,
Macquarie University Law School

The fundamental legacy of the current Labor Party regimes in Canberra and N.S.W. may one day be seen as having succeeded in transforming this country into a heavily policed Banana Republic.

Agree — Disagree — Don't know — (check one).

Faced with such a question in a survey poll, some members of this audience might simply chuckle, hand back the paper and comment: who is the nut who dreamed that up?

Yet current tendencies in the body politic — and economy — suggest that we might consider seriously the historical trajectory of policing in Australia and the possibilities which are ahead of us. After all, should Mr Keating's dire warning come to pass, how *will* an Australian Banana Republic be policed? Events north of N.S.W. border, as indicated by Father Brennan¹, do not suggest that the traditions of the "rule of law" are an iron-clad guarantee of the survival of liberal democracy. India and other former British colonies are further proof of that. And the experience from other traditions (e.g. Germany, Argentina) seemed no stronger bulwark to a slide into authoritarianism — to maintain "public order" — with economic collapse.

It is to raise some wider issues and encourage discussion that this paper has been written. Many of the ideas are developed at greater length "*Policing: Practices, Strategies, Accountability*"²

The issue of "Policing Public Order" cannot be divorced from the nature of the society in which it is debated. Indeed, the kind of policing we have will in significant measure help to constitute that society.³ As one police scholar of his own profession has succinctly commented: "Police are part of the politics of social control".⁴

Putting aside the question of the economy, which no one surely can feel optimistic about, I believe we are now entering a very dangerous period in the civil life of this country. It is an ominous sign that over the past decade "law and order" has come increasingly to be seen as a vote winner. The latest indication of that is Mr Howard's recent Deakin lecture.⁵ Another recent indication is Mr Unsworth's rapid capitulation to an irresponsible Police Association campaign — in particular I refer to the T.V. advertisements — to "Reinforce the Force".⁶

From one's own experience here and abroad, and indications from official statistics, there does not appear to be any substantial basis for the fear of crime which is being whipped up. Levels of street crime — or even suite crime — and other forms of public disorder are not particularly high in this country or in N.S.W. specifically. We

1. see pages 11-21.

2. Brown, D. et al, *Policing: Practices, Strategies, Accountability* Special Issue of the *Alternative Criminology Journal*, 1985.

3. This point is developed brilliantly and comprehensively in S. Hall et al, *Policing the Crisis: Mugging, The State and Law and Order* (London: MacMillan, 1975).

4. Alderson, J. *Policing Freedom: A Commentary on the Dilemmas of Policing in Western Democracy* (Plymouth: McDonald and Evans, 1979), p.57.

5. See a report in the *Sydney Morning Herald*, 25 July 1986.

6. See story and illustration in P Turner "Police ad campaign aims to frighten public into protest" *S.M.H.* 25.6.86 and see generally, G H Boehringer, "The Force Be With You: Police, Practices, Policies in N.S.W.", (1986) 11 *Legal Service Bulletin*, No. 4.

should not be stamped into rash policies and practices of policing by media accounts of "War in the West",⁷ "trade union bullyboys" or "bikie drug gangs".

No doubt there are social problems, of many kinds, that need policing. And no doubt some of these can be appropriately addressed by the police. And a few may even need the attention of police with specialist training and equipment for handling public disorder. But we must keep things in proportion. As one police commentator has written:

The police cannot rely on bigger and better battalions of shock troops, but will need all the intellectual power they can muster to cope with the challenges through improvement without expansion and by frequent pro-active police measures (and not by permanent reaction).⁸

The problem presented by "policing public order" is that it may become the dominant focus, it can twist and distort the policing effort, and in due course, break the tenuous nexus — which has constantly to be negotiated — between community and police. When that occurs, policing cannot be based on a community consensus, on ideas of mutual accommodation, on a flow of information and support from the community all of which are necessary for the style of policing we have been, in large measure, accustomed to.

According to the same police commentator: "It should also be pondered that there is a correlation between levels of police power and public support for the police. Thus, where police have swinging powers, public support will be in inverse proportion".⁹ Policing public order by coercion will act as a general illumination which bathes all else in its own light.

Models of Policing: A Choice Still Remains

There are perhaps two models of policing which can be used to represent the major choices for policing Australia. The first is *community based*: the police have a relatively close relationship with the people; the authority relation is seen to depend not just on legal position of the police but on their integrity and excellence of service; personal relations are emphasised and much of police information comes to them from the community; technology (arms, cars, etc.) is de-emphasized and policing is done individually or in small numbers. Policing is largely overt and unthreatening. It is highly decentralised. As the police are local and approachable, there is a stream of direct citizen participation and mutual co-operation in the process of determining how policing will be effected. A good deal of the police effort is proactive or preventative, simply by its presence in and knowledge of the particular community, and the sympathetic on-going relationship built up with the local people.

A second model is *militaristic*: the police are relatively withdrawn from the people; the authority relation is seen as essentially based in law and coercive power; personal relations are de-emphasized; communications between police (and selected civilians) replaces general communications with the people; increasingly police information is police produced (though special programs may be introduced, often by a new Community Relations Branch — to re-establish citizen communication/assistance, e.g. Operation Noah, Neighbourhood Watch, etc.¹⁰) Policing is done much more by special units, often covert, and much more often threateningly. It is highly centralised due to high capital investment in computer communication technology,

7. See e.g. the coverage of alleged gang war between ethnic groups in Sydney's Western Suburbs, *Sun Herald* 13.7.86; *S.M.H.* 18.7.86

8. Alderson, *op. cit.*, 213.

9. *ibid.*, p. 12.

10. See L. Wilson, "Neighbourhood Watch (1986) 11 *Legal Service Bulletin* 68-71. See Also B. Dunne, "Community Justice Centres: A critical appraisal" (1986) 10 *Legal Service Bulletin* 188-191. And see generally for an attempt to theorize such developments, T. Luke, "Culture and Politics in the Age of Artificial Negativity" (1978) *Telos*, No. 35, 55-72.

cost effectiveness considerations, general bureaucratic tendencies and, perhaps most important, the shift away from the preventative to a reactive/firebrigade mode.

By way of summing up, it should be noted that:

Modern democratic policing is based on good communications; there is a paramount need for effective communication with the public . . . modern democratic policing is a joint operation between the police and those many publics. It is not possible to conduct a joint operation unless both sides of the partnership are well informed about each other's hopes, fears and aspirations. On the other hand, policing in an authoritarian society depends, not so much on the type of communication between police and the public which will lead to a dialogue about policing, but rather on the communication of orders, directions and coercions. There is no dialogue, only a monologue.¹¹

It can hardly be denied that policing in N.S.W. has been moving away from the traditional community model to the militaristic model. Admittedly there have been some interstitial attempts by police administrations to slow or modify that trend in certain respects (e.g. community liaison units) but it has been the dominant tendency. Unfortunately this provides evidence to support the view that *militaristic policing* is an almost inevitable tendency in our contemporary world of alienated souls, huge unemployment, massive poverty and social injustice. And as has been suggested, there is a high probability of "leakage" in style, policy and practice from the proudly paramilitary mode of the special units to general policing. Such a tendency, and such "leakage" receives impetus from the very culture of the police organisation: "Police are more comfortable in an authoritarian world."¹² This, of course, can set up a downward spiral into the very "public disorder" which acts as a justification for militaristic policing: people today are increasingly unwilling to put up with police authoritarianism, at least when applied to them. (As has been argued by at least one eminent policeman, "some illegal behaviour may be seen as more tolerable than the police behaviour, even if technically legal, used to prevent it").¹³

Again, in this technological, bureaucratic age of rapid impersonal communication, the police are no exception to the infatuation with rational administration, "efficiency" (not to be confused with effectiveness) and the potential of technology. This syndrome, which many of us have been exposed to as employees, operates in the structure of policing to de-humanize (or in Braverman's usage, to degrade¹⁴) the job. Thus the workforce operative, or rank-and-file police officer is no longer out there on the beat, more or less on his/her own, making street-level decisions concerning people with whom there is an on-going relation and therefore both incentive and human needs which propel the "police worker" to act humanely towards those with whom he/she comes into contact.¹⁵

That the hierarchic, closed and essentially unaccountable bureaucracy of the modern police institution should increasingly come to reflect the paradigmatic model of bureaucracy — the army — should not surprise. However, knowing what we know about the generation and implementation of anti-human policies by such bureaucracies (e.g. the body count syndrome of Vietnam, chillingly recounted in a recent critique of the bureaucratic nature of contemporary American culture¹⁶) there must be a real concern about the future not only of public order policing in Australia, but of the policing of this society generally.

11. Alderson, *op. cit.*, p. 100.

12. *ibid.*, p. 219.

13. *ibid.*, p. 4.

14. See generally H. Braverman, *Labor and Monopoly Capital: The Degradation of Work in the Twentieth Century* (New York: Monthly Review Press, 1974).

15. See the analysis of the policeman's role using Braverman's theory in S. Haring, "The Taylorization of Police Work: Policing the 1980's" (1981) *Insurgent Sociologist* X:4, X1-1, 25-32.

16. Baritz, L., *Backfire: A History of How American Culture Led us Into Vietnam and Made Us Fight The Way We Did* (N.Y.: William Morrow, 1985).

Is There a Better Way Forward?

The development of contemporary policing-organisation, policy, practice, has largely been a matter of internal police decision-making, presumably based on "expert" advice about what is conceived as, essentially, a technical problem. And no doubt a good bit of information and advice has been obtained from overseas — Japan, the U.S.A., West Germany — as well as the traditional source of inspiration, the U.K. Much of this advice and, so far as one can tell, the models chosen for the modernisation of policing would seem over-balanced towards the militarist-high technology style of policing.¹⁷ The imposition of a Police Board on top of the police structure was an attempt to modernise and rationalise decision-making about police matters, but it certainly has not opened the process up to any democratic participation by the citizens of N.S.W.¹⁸ It was essentially an efficiency exercise — note the appointment of a former chief business executive.¹⁹ It owes more to the mal-administration revealed by the Lusher report²⁰ (and continuing corruption scandals, etc.) than it does to any principle of open, democratic in-put from those who are being policed (or indeed by rank and file police officers).

Surely the present tendency, or drift, into the more comprehensive militarisation of policing should not be allowed to continue. As numerous commentators have noted, there has been no public debate about these issues of fundamental importance for the quality of life in the Australia of the future.²¹ There should now be such a debate. As it happens there are some excellent sources for that debate from the ranks of the police themselves. I call to your attention the published work of two highly respected, thoughtful and very experienced policemen: John Avery (Commissioner of Police, N.S.W.) and John Alderson (formerly Chief Constable of Devon and Cornwall, and also former Commandant of the Police Staff College, Bramshill, England). Each has written a significant book on policing which helps to point the way forward.²²

In their books, Avery and Alderson both argue that there is a need for greater citizen participation in decision-making about policing. Both, reflecting upon their long experience in the police, and upon the academic literature concerning policing round the world (of which there is an huge volume) came to the conclusion that a significant change must be introduced into the police-community relationship. In their view, it is essential, if we are to develop appropriate policing in the future, that the voice of the citizenry be heard and, most important, be taken into account, and that this be done through formal, open, democratic organisational structures.

While Avery and Alderson differ somewhat in how they envision the process which they advocate operating, and apparently in the degree to which citizens should participate in developing police practices and policies, it is significant that these two leading authorities on policing a democratic society, writing contemporaneously but independently half a world apart, have come to similar conclusions.

Essentially their argument is that there should be formally organised committees (Avery: Social Safety Councils; Alderson: Community Police Consultative Groups). There are various models and a range of experience which can be drawn upon,

17. See generally C. Cunneen, "A Garrison State: The Police in Arms" *Arena* No. 71, 1985, 67-89.

18. A reading of their first two reports, and the unavailability and drabness of them compared to the annual report of the Police, testifies to this.

19. In addition, membership is composed of the Police Commissioner and a retired senior federal legal officer.

20. *Report of the Commission to Inquire into New South Wales Police Administration* (Sydney, 1981).

21. One of the first comments on this development is in R. Hogg, "Police: N.S.W. Tactical Response Group" (1982) 7 *Legal Service Bulletin* 75-76.

22. Avery, J., *Police: Force or Service?* (Sydney, Butterworths, 1981); Alderson, J., *op. cit.*; see also Alderson, J., "The Case for Community Policing" in D. Cowell et al (eds), *Policing the Riots* (London: Junction Books, 1982), p. 135-146.

particularly in the U.K., and about which a substantial literature has now developed.²³ These developments ought to be considered in any consideration of policing our society in the future whether it is public order or any other kind of policing.

Police Autonomy — Under Threat?

To those who might wish to remind me of the dangers of “politicizing” the police, and of the historic “autonomy” of the police, and therefore the inadvisability or even constitutional impossibility of any significant citizen participation in the control of policing, I would briefly make several points. To begin with, the historic “autonomy” of the police is, in some considerable measure, in the eye of the beholder. Without here opening up a *political* argument about the historic role of the police whether in policing public order or otherwise,²⁴ let me say that both the English experience (under their 1964 *Police Act*) with local authority police committees;²⁵ the South Australia experience,²⁶ and a substantial literature on the issue, attest to the view that the traditional notion of police independence from political processes can be significantly modified without the heavens falling in. Indeed, if we want to involve the citizenry in a significant way there is no barrier — constitutional or otherwise — to doing so.²⁷ I can hear the murmurings, the doubting whispers — “smacks of mob control, vigilantism, anarchy, totalitarianism”. There are several points to make in response.

First, we are coming close to getting some of that now. For example, in Dubbo within the last year a local “law-and-order” campaign was whipped up which featured mass meetings of 2000 or more citizens. A study of that campaign has noted that it was tinged with racism and notable for a media inflamed climate of crisis.²⁸ The proceedings have been marked by sensationalism, simplistic arguments and demands for essentially scapegoating “hang and flog ‘em” final solutions. This campaign, it may be pointed out, has featured prominently a retired senior police officer, a local member of parliament, and a number of local business entrepreneurs. It has been a successful campaign in that 1) the Premier was forced to go to Dubbo, and 2) police and research resources have been promised to the community in order to deal with the alleged “crisis of law-and-order”. Yet there are those in Dubbo who would see the campaign as a disaster to local social relations and, even, economic conditions. However one judges the results on balance — is *this* the kind of citizen participation that we want, and if not, how do we re-direct the concern, knowledge and enthusiasm of local communities in the future?

Second, though there are always, and obvious, dangers in invoking democratic procedures, the experience of other countries with liberal democratic traditions does not indicate that democratizing decision-making about policing necessarily equates with irresponsible and unproductive intervention in the policing process.

Third, on philosophical grounds, why should we not introduce a modicum of democratic participation into a sphere of the state which is increasingly so powerful

23. See e.g. Spencer, S. *Called to Account* (London: NCCL, 1985); Simey, M., “Police Authorities and Accountability: The Mersey-side Experience” in Cowell, D., *et. al. op. cit.* 52-57, and Bundred, S., “Accountability and the Metropolitan Police: A Suitable Case for Treatment”, *idem* p. 58-81; Jefferson, T. and Grimshaw, R., “Law, Democracy and Justice: The Question of Police Accountability”, *idem*, 82-117; and see Brogden, M. and Gill, P., “The Struggle for Democratic Policing in Merseyside” in Brown *et. al. op. cit.* 82-97; Fine, B., and Millar, R. (eds) *Policing and Miners’ Strike* (London: Lawrence and Wishart, 1985) p. 204-216.

24. See generally, Bunyan, T., *The History and Practice of the Political Police in Britain* (London; Julian Friedman, 1976).

25. See e.g. Spencer; Simey; Jefferson and Grimshaw; and Brogden and Gill, *op. cit.*, note 23.

26. See the brief note in Phillips, R., “A Note on the Relationship Between Police Practice and the Law” in Brown, *et. al. op. cit.* 70-72.

27. See generally Jefferson, T. and Grimshaw, R., *Controlling the Constable: Police Accountability in England and Wales* (London): Frederick Muller, 1984).

28. Catt, C., “Law and Order in Dubbo” (unpublished research paper, Macquarie University School of Law, 1986).

and potentially fundamentally subversive of the very essence of our society — our freedom? As the former top policeman in the U.K., Sir Robert Mark (not unknown in this country, and certainly no friend of anarchy) has commented: “The police in this country have nothing to lose and everything to gain by offering the fullest possible account of their activities.”²⁹

Fourth, unless we ensure that policing by consent, community based policing prevails over militaristic policing, then the consequences will very likely be a massive, qualitative change in the social relationships of the society in which we live.

I have had the opportunity to study policing in two places where militaristic policing has been established, Northern Ireland, and the City of Brotherly Love, as we used to call Philadelphia. There are differences between the two. The former has had military policing since it emerged out of the Partition of Ireland. The latter has drifted into militarized policing since the destruction of its traditional manufacturing base after World War II.

Perhaps the Northern Ireland experience is not all that relevant to contemporary N.S.W. (though the Aborigines might feel differently). But I can assure you that it was a powerful lesson to be there in the early 1970s and to learn of the alienation of the people — which the international mass media informs us still exists — from a Police Force which was very much just that: armed up with the latest weaponry (and communications) which they did not hesitate to use. Such was “policing public order”, a public order which they are still finding it impossible to impose without community acceptance.

Possibly of more relevance is the policing of Philadelphia.³⁰ Not a Banana Republic (though roughly a million blacks, largely unemployed and ghettoized might call up such a notion), it is rather a Rustbucket. Its economy clobbered (except for the new service, tourist and other glamour industries which have sprung up in the outer, white suburbs) and so were the people. Chief of Police, a firm believer in militarized policing, was elected Mayor and in the heady law-and-order days of the post-Vietnam backlash, graced the cover of *Time* magazine as an exemplar of the new conservatism in politics. Surely *he* had the answer to “policing public order”? No, he did not, nor have his successors.

Many of you may remember seeing on TV, in May of last year, a goodly section of Philadelphia burning. How come? Because to enforce “public order”, the police used a helicopter to bomb a barricaded house containing a group of about a dozen (disorderly) black “radicals”. More than a decade before, this group had come to the notice of the police — they were mounting public protests against poor conditions in gaols and for animal rights. Over more than a decade the group was harassed into, I think it is fair to say, a collective paranoia. Symbolically, each house they occupied, they immediately barricaded themselves into, and away from the intrusive agents of the state.

Not only did the police bomb the house (with explosives of a military kind illegally obtained from the F.B.I.), but they also brought to the scene a number of weapons “borrowed from private sources”, including heavy machine guns. So determined were they (and out of control of the Mayor and Chief of Police) that they not only expended more than 10,000 rounds of ammunition but even ran short at one point.

Dominating the scene, the police were able to control the Fire Department. Tons of water were used to attempt to dislodge the radicals by forcing them to choose — surrender or drown. Prior to the bombing, the water was ordered to be turned off. As a result of the bombing, a fire started and eventually consumed the neighbourhood.

29. Mark, R., *Policing a Perplexed Society* (London: George Allen and Unwin, 1974), preface.

30. See generally, G. Boehringer “Return of the Hurricane: Reflections on the Administration of Criminal Justice in the USA”, *Australia Left Review*, No. 96 (Spring, 1986).

Incredibly the water was kept off presumably to allow the fire to make it too hot to stay in the house. Or *was* that the reason? Evidence shows that as a number of women and children tried to flee the burning house, they were deliberately forced back in by gunfire from police officers stationed in the back alley. All occupants of the house save a woman and a young boy who escaped, perished in the fire. In the ashes, only 3 old weapons were found — none automatic, and one old pistol may not even have been operable due to its rusted condition. Thus, very briefly, was “public order” maintained! Until the next time?

Such a scenario is, of course, unthinkable in Australia. It is simply the working out of another, unfortunate, American tragedy. And after all, there was a month long fully public (on public interest T.V.) “gavel” inquiry resulting in the resignation of the Police Commissioner — who by the way was ex-military, as many of the Philly cops are.

But what are we to think when we read of the kind of training and exploits the S.W.O.S. engages in here in Sydney?³¹ And isn't there a kind of eerie parallel in the developing history of the seemingly omni-present and “gung ho” TRG — consider if you will the over-kill involved in the recent “drug raid” in which it appears only police guns were blazing (ironically, at each other).³²

Is it not possible that we are even now seeing the constituent elements coming together which will plunge us into a nightmare of “Mad Max” dimensions only a little way down the track?

31. See the articles concerning a complaint brought by a policewoman against a police sergeant in charge of a training course exercise, *S.M.H.* 22-27.7.86.

32. See the articles concerning this incident, *S.M.H.* 22, 23.7.86.

Gill Boehringer

I must say I am very pleased that the Institute has instituted this debate, if I can put it that way, and I would certainly agree with Grant Wardlaw (as I usually do when he comes here) that there has been a lack of significant and informed public debate about policing. It is unfortunate that the development of modern policing has come to be seen as largely a technical, in-house discussion amongst the police. I certainly appreciate the empirical descriptions and comments from Mark Findlay and Frank Brennan because I think they have raised a number of issues that I do not particularly want to deal with here, and do not have the time to do so; but they certainly do suggest that there are some serious problems in the development and control of policing in certain parts of this country and around certain kinds of behaviours.

I wrote my paper because I wanted to raise some issues, not from the "looney left" as some people may have expected and, indeed, if I may say to Grant Wardlaw not with ideological blinkers or indeed even from an ideological position. It seems to me that it is unfortunate to characterise in that way people who attempt to criticise policing in a serious manner. It seems clear that one of the things we have to do is the sort of thing that we have heard from the other speakers, and that is: look at actual policing strategies and practices and then try to answer the question that you raise about the balance that we want in policing.

I was very interested in reading today's *Australian* newspaper, for on the front page there is some material that relates to the point I tried to make in that initial quotation in my paper — which comes from me actually — about policing a "banana republic". It does seem that while we are not yet in a crisis of public order the kind of thinking that Mr Howard is beginning to feature — for example, in his recent Deakin lecture where he stresses the need for a "law and order" policy and now he and some others in his opposition shadow cabinet are talking of confrontation with the unions — these remarks suggest that as the economy barely creeps along as it is likely to do for a few years, we are going to be looking more and more at confrontation and problems of public order. So I think that it is really an excellent thing that the Institute has raised this issue and I am grateful to the three speakers for coming along and talking about it.

In my brief paper I tried to deal with the issue that has been raised here in part: the leakage from "heavy" policing into general duties, or "soft" policing. I tried to pose two models of policing: militaristic as opposed to community based policing. I tried to tie that up not with an ideological analysis, which I forbear to do at this time, but with a general critique of modern society. The bureaucratisation of this society, the infatuation with professionalism, efficiency, technology, rapid communication, the tendency towards centralisation of authority, all of the things that we see not just within the police but throughout our society, throughout governments generally: this is reflected in the mode of policing.

Whether it is propping up a capitalist state or protecting a state capitalist regime in Eastern Europe, that is not the issue. It seems to me that it is very hard to argue that these tendencies that we are experiencing, some of which have been referred to, are not re-shaping the police dramatically. And hard to argue that there will not be leakage from the special units — TRG, SWOS, etc., where they originally appear, into general policing. Indeed taking together this tendency toward bureaucratization, etc., the willingness of politicians to win votes through public order confrontation, the very likelihood of an economic falling apart, the sort of militarized policing and alienation from the community I refer to in the paper, which I saw in most comprehensive effect in Northern Ireland, which of course, is different from Australia: and the tragedy of repressive policing in Philadelphia, which is different from Australia too; nevertheless, however different we may like to think this society is, it seems to me the arming up, the

centralisation, the use of all the latest technology, the wide-spread adoption of the latest high-tech communications, the withdrawing of the police from the community into their central bunkers in a sense, all of these things have, if you will, a multiplier effect. These could be a part of our future. Be it in a state capitalist or any other country, it seems to me these are the dangerous possibilities of our modern mass society under stress.

O.K., What do we do? It seems to me that is the important issue. Let me make one point quite clear here. I accept that there are lots of reasons why we should be sympathetic to the individual police. I am interested in occupational, workers' health and safety. It seems to me that is a massive issue for police. I have tried to take it up in a couple of places. Interestingly, the media has twice cut that part out of my interventions into public debate; for example by editing my recent letter to the *Sydney Morning Herald* concerning the police campaign to "Reinforce the Force." They do not want to know about occupational health and safety. They do not want to analyse the structural causes of the stresses the police are under. So I have a great deal of sympathy, as a trade unionist, for police generally. In particular I have a great deal of sympathy for the rank and file front line police person who is under that kind of stress. It seems to me, however, that it is rather regrettable, and I would argue irresponsible in view of the TV campaign put on by the N.S.W. Police Association, that the police should simply ask for more police. I would argue they ought to be having a firm look at the way in which their work is being degraded because of the sorts of things I was talking about, what we might call the "Taylorisation" or proletarianization of their work. It seems to me they ought to be looking at the direction in which their bureaucracy is taking them because it seems to me more police, in the same sort of organisation, with the same kind of work, is just going to mean more alienated police, more police under stress and dissatisfied with their day to day routine. It seems to me in dealing with police numbers and police stress, that the reorganisation, the re-structuring of the police organisation is terribly important.

I would again argue with Grant Wardlaw about accountability and local community involvement. I am not so much worried as he is about local or parochial or political inputs. It seems to me that you are not going to get what we really need in this State, and in this country: a public debate about the police which is ongoing and really significant. I am suggesting, and here I take a leaf out of John Avery's little book, *Police Force or Service?* John Avery, the Police Commissioner in this State now, published his book five years ago, and John Alderson, a top policeman from the U.K., wrote in his book *Policing Freedom* along similar lines. They both emphasised the need for community involvement, the need for community participation, democratic participation through local councils. This was a suggestion I will be interested to see how far John Avery takes now that he is Commissioner. The idea of local community debate around policing is democratically, philosophically, politically, pragmatically, fundamental if we are to avoid adrift into what Stewart Hall has called a "law-and-order society". It is not as if one is asking for, reaching for, the sky.

It seems to me that the experience is limited, difficult, complicated, not entirely successful, but the experience of local authority councils in the United Kingdom does represent a possible way forward which we should not overlook. Of course, there are differences in political structure and culture and so forth, but we have to begin to think about at least discussing these matters. It is not good enough to say: "Well, we just refer to the law and policy and recognise police discretion."

All of these things have to be publicly debated, but they are not. One of the problems is that the police have the advantage because it is technological, it is expert, it is efficiency, and they assume they are the ones who know and no one else does. And the politicians in the States really defer to that line, as Mr Unsworth has indicated they tend just to roll over and play dead when the police say we want two or three thousand more police. What we need to do is open it up to an array of people, to the people who

are policed, to the people who know their local communities. If we can reorganise policing, local people will once again know their police.

There are already some tendencies operating in this direction: liaison units, for example, have been developed over the past few years; these represent recognition by the police administration that a closer relationship has to be developed with the community. So I would certainly like to see in this debate the possibility raised and discussed of developing structures whereby ordinary people, trade unionists, small business people, local people of all kinds — social workers, teachers, the odd academic, or even the just plain academic, the people who are involved one way and another in the affairs of the community — can be given a legitimate role to play in discussing with the police just how their community should be policed. The question that has been raised: what is going to happen when you get two groups who want policing a different way? It has been suggested that it is the police who are going to have to decide. Well, the fact is the police decide already, and I would argue that the police ought to be faced with these different groups, and those debates ought to take place out in the open.

Just one last thing: the possibility of an aroused, crisis driven citizenry. This is beginning to happen anyway in a way it seems to me that is very dangerous and has to be recognised. Indeed, it suggests the imperative nature of what I have just been suggesting. I have had a student do some research on the Dubbo situation where there was a "law-and-order" debate within the past year. I can tell you it is very worrying that increasingly "law-and-order" is getting tied up with racism, with vigilantes, it has great potential for vigilantism. That debate has developed in an unstructured way, fanned by the media, whipped up by individuals representing various interests. They are doing this already. Two thousand people went to a public forum to debate "law-and-order" in Dubbo, and my reading of the newspapers and of my student's work suggests to me that such debate is a very frightening proposition when it is unstructured by some local authority, and not related to the kinds of fundamental issues that we are raising today; but arises out of an unreflective backlash to so-called crisis of public order and of rampant crime. I believe that unless some action is taken to direct and channel and make community concern legitimate then we will be moving in a direction where the kind of activity becomes uncontrollable.

DISCUSSION

David Thorley, Director of Public Prosecutions Office.

I have two questions: There was extensive reference, particularly in Dr Wardlaw's paper, to the United Kingdom reports of Waddington in particular. Were there any lessons learned from policing of the coalminers' strike in the United Kingdom? Secondly, there did not appear to be any references in any of the three papers to the situation where the Governor of a State can request the assistance of the Defence Forces in riot control which is known as "aid to the civil power". I would simply point out that any special training that might be given to the Police Forces would also have to be extended to the Defence Forces which are already trained in riot control.

Grant Wardlaw,

As for the lessons that were learned from the miners' strike I think that very much depends on which side of the political fence you sit. As far as the police were concerned they learned a lot of practical tactical lessons. However, the use of some tactics obviously caused a lot of political controversy. The particular methods the police used, and whether their use was justified in the circumstances, really depends on who you believe started some of the particularly nasty incidents. However, I think the greatest controversy came with police use of common law powers to stop people many, many miles away from an incident and turn them back because there was presumed common purpose in going to disrupt the law somewhere else. That is an issue that I do not think has been legally resolved as yet.

I certainly did not mention the "aid to civil power" issue because I was concentrating on what I would see as being the likely events that police will face in the near future in Australia. I think it is most unlikely that we will in the foreseeable future have a situation where the Defence Forces will need to be called out under that particular heading of power — they are more likely to have to be called out in an anti-terrorist role. I think the call-out of the Armed Forces at Bowral after the Hilton Hotel incident was widely regarded as an over-reaction, and it is unlikely to occur even in those circumstances again. Who knows?

Mark Findlay,

Just one very brief comment about a lesson to be learned from the policing of the miners' strike. When John Alderson was out here recently giving seminars to people interested to discuss just those issues, he mentioned a very important point, (Gill Boehringer raised it in the matters that he spoke of earlier). It has been traditional in British police practice that policing is based on a notion of locality so that most Police Forces, as various as they are in England and Wales, are set up with some control on a municipal or a regional basis. Prior to the miners' strike legislation was passed which allowed the Chief Constables from various regions to transfer forces from one area to another and therefore to supplement forces in particular regions where problems may have necessitated this. In fact, what they did during the miners' strike was to use that power very liberally, so that if police officers, say, in Yorkshire or in Newcastle or in Wales had sympathies with the miners and felt that their position was a difficult one, police would be transferred from another region. Placed in that situation these transferees would carry out their control function without the same feeling of community responsibility that the local police may have. They would withdraw after the conflict and the local police would be left to clean up the mess. Alderson gave an interesting example of how this caused real conflicts between certain regions. As you will know some of the municipalities, particularly the major cities in the west, are controlled by quite radical labor councils and they would resist through their policing committees the attempts to draw their men away from a particular region and put them into

conflict against trade unionists outside their own region. Alderson made the point that, in fact, one Chief Constable from a conservative based constituency called upon the mounted police from another region to be shipped into his area. The Chief Constable in that area where they were to be shipped from agreed, but the local council would not agree to that transfer. The Chief Constable said "The deployment of my men is a matter for me to determine. It is within my discretion. You have no control over me". So the local council committee said "Alright, you can ship the men but you cannot ship the horses because we pay for their feed, we bought them, they are staying here". So the men were shipped and the horses were not.

Briefly the issue is that when you take from a particular community policing region (and this is a problem with TRG policing too) the individual police who are on a day to day basis for the policing responsibilities of that area, then the potential for conflict and for a dissonance between community interests and police interests becomes much greater.

Professor Christopher Hood, Department of Government & Public Administration, The University of Sydney.

I would like to make a brief comment to Dr Wardlaw's paper. On page 65 of his paper, he puts the case for a part time trained reserve of the police to deal with riot situations. I think that that is a proposal that needs to be thought about very carefully. Many references have been made in the papers and in the discussion to the policing model in Great Britain but not very much has been said about *Ireland*. There was indeed a part-time reserve in Northern Ireland up to 1970 — the B Specials — which were exactly a part-time reserve designed to deal with riot situations, but the problems of racism and vigilantism that Mr Boehringer commented on earlier, were very marked in that Force. Similar things, perhaps, could be said about the National Guard in the United States. I think a part-time reserve solution has to be thought about quite carefully.

I should like to follow up as another option David Thorley's earlier comment about the possibility of calling in military aid to the civil power. If you use military forces to police riots when public order has broken down, and you make a decision *not* to equip the general police in a militarised fashion, it could be argued (and indeed this was at one time the doctrine in the United Kingdom) that this is an appropriate division of powers between the ordinary constabulary and the Armed Forces. The argument was that only by using the military to police riots could you guarantee the impartiality of the police, and that when the military were brought in clearly you were bringing in a force that was not impartial and had no pretence of being impartial between the government and whoever the rioters might be.

I also could be argued that that kind of arrangement sets up the right kind of incentive structure in this area in the sense that it gives the police incentives to keep riots down rather than to amplify them.

Grant Wardlaw

Could I just clear up a misunderstanding which probably results from my sloppy use of language on page 65. When I talked about a trained reserve I meant a reserve within the police that they can call on to bring people from a particular area to deal with the riot, and when I say part-time I mean part-time regular policemen and not part-timers on the outside. I believe that we should not have a *full-time* police riot squad. I do not think that that is justified and I think that it tends to result in the use of those people policing things in a harder manner which would in the past have been policed in an ordinary manner. I am not talking about having an outside organisation which is a part-time reserve I am talking about having a part-time riot squad made up of full-time serving policemen or women.

Hugh Dillon, Lawyer, Department of Youth and Community Services.

I would like to ask Frank Brennan a question. There seems to have been a number of occasions in Queensland where the government deliberately chose to raise the level of public disorder by talking the harshest possible measures very early on. I am thinking of the State of Emergency in 1971, then the Street March Ban, and the 1982 Commonwealth Games. I do not know whether you will be able to answer this, but what I am wondering is what happens to a Police Force when it is placed under the stress of having to act in an explicitly political way?

Frank Brennan

In 1979, when the Street March Ban was at its peak, the Deputy Police Commissioner gave a speech saying that the problem with policing in Queensland was that decent ordinary citizens were withdrawing their support from the police, and that they really should give it as such a time when there was a very urgent need for it. Two days later there was a demonstration in which a young police officer saw a female friend of his beaten by Queensland police; he went back to the central police station and resigned. Later he gave a speech in King George Square, Brisbane, and spoke of the problems of police morale which had arisen because the police were being used in such a political way. In the next Annual Police Report, his resignation was described as a "defection". This instance highlights that the Police Force does suffer an acute loss of morale, it does experience itself finding less sympathy with the public in general, and it does find itself being used as a political tool by government in relation to policies which might not be altogether popular. Of course, in Queensland the police have been used in a way which has been tied very closely to State elections, as occurred most graphically with the by-elections in 1971 of Merthyr and Maryborough. Further politicisation of the higher echelons of the Queensland Police Force resulted in a further loss of public faith in the police as an institution.

Chief Superintendent L. Boulton, N.S.W. Police Community Relations Bureau

I have found so far that Mr Boehringer's remarks have attracted me more than the main speakers, with respect. I think that is probably because the matters he touched on represent the current strategies of policing within New South Wales. By way of comment I would like to refer to some of those strategies because it will probably have an effect upon this debate.

Firstly I am in favour of peaceful resolutions of confrontations. I suppose that is natural, but there is a need, of course, for TRG operations. Most of the personnel who work in the TRG are part-time. They do their normal policing duties and are called upon from time to time to perform the TRG role. The biggest shift in the emphasis of police operations is occurring right now, but it started about two years ago when the Community Relations Bureau came into operation. What we are endeavouring to do is shift the emphasis in police operations from reacting to situations, to doing something about preventing crime, and, of course, awakening the people in the community of the need to play their part in policing the community. There is an onus in common law for people to take their part. By that I do not mean that we want vigilante groups throwing their weight around, but there is a need for people to at least watch what is going on and take their role. That was the strategy behind Neighbourhood Watch, a system which is flourishing quite well in New South Wales.

Mr Boehringer referred to Mr Avery's book and the use of consultative committees. That is now one of the strategies for the corporate plan of the New South Wales police. We have already started these consultative committees and it is planned to have them operating throughout New South Wales before the end of the year. This means that ordinary people will play a part in policing the community.

The idea is, first of all, that there must be a tremendous wealth of ideas out there

which we want to tap into. Secondly, we seek to put together committees which are representative of individual communities so that we can provide a policing service to those communities that they want, and that service is going to vary from one part of the State to another. What happens on the North Coast at Ballina, where you have a floating population, is going to be different to what happens at Redfern or what might happen out in the West. The Commissioner talks about "consumer satisfaction" and that is what it is all about. All the liaison units we have operating are designed to tap into the ideas of the people in the community because we take the view that the police are the people, and the people are the police, and that we should be working towards developing the relationship that we have with the community into a partnership. That is the way the Force in New South Wales is heading which, I would submit, seems to overcome many of the criticisms that have been levelled at New South Wales police in the past.

Jeff Sutton, Director, Bureau of Crime Statistics & Research

One of the difficulties when examining riot problems is the need for what amounts to being a "taxonomy" of riots. Research on Bathurst has demonstrated how particular that scene is, and how it is so specific even when it is compared with events of an apparently similar kind e.g. the problems in Mildura where there was a similar bike riot or, with say, the Star Hotel disturbances in Newcastle. They all tend to be different, and that is only within one country and trying to restrain yourself to a particular type of disturbance. If one looks to the soccer riots, say, in Britain, even within that category the disturbances, say within England itself and in Brussels show how very difficult it is to generalise. The points which are being made in the paper seem to me to have different impacts according to the particular cases to which they are referring, so that you might decide to distinguish between the sports riots which in some senses have a rather purposeless quality and, say, the Brixton riots where we are dealing with what appear to be more like civil disturbances, or, in particular, those in Northern Ireland which have enormous and quite explicit political component directed towards particular groups.

On the other hand you might compare those which are community based with those which are general. In a sense the Bathurst events are not really Bathurst, they just happen to be located there and a great many people come there and a great many people come there from Queensland, Victoria and other parts of New South Wales. That would also be a problem with respect to the discussion of the miners' strike, and Mark Findlay gave an example of the police being moved from place to place. There another dimension enters: that is not just the orientation to a local community, but the identification with a particular industry or union.

I do not believe research of this kind is being done yet. I do not see any sign of research which has indicated this kind of complexity of the dimensions of the problem. I do not think that we can really come to grips with some of the issues that have been raised such as the particular discretion of individual constables versus the general accountability, say, of a TRG; the use of high technology equipment; the assisting of a civil power in cases of breakdown of law and order; and the actual problems of a third force which have perhaps their most vivid expression in the problems of the French CRS, unless you first of all broaden out the concepts of riot and begin to carve it up into its components. Look at the dimensions that are involved and then apply it to the problems that have been expressed in the papers.

If I were involved in police training or strategy I would be looking at a two way dimension of taxonomy of riots: time strategies versus type; and then look at the problems within the cells that you thereby generate with respect to particular behaviour of individual police versus the collective police entity, however it exists, and so on. I would like to invite comment from speakers whether that might be a strategy in research which might be adopted in the future.

Mark Findlay

There is one point I would like to make in response to what Jeff Sutton said. I think it is not only important to concern oneself with the nature of a particular riot that you are dealing with but also to remember two other features. You are not simply trying to define the sort of riot that you are dealing with, in terms of the parameters of further research or whatever. We have become very clear about the specific nature of what we are looking at in Bathurst and the difficulty in generalising from that. There are two other things which are important to keep in mind. One is the dynamic nature of the collective behaviour itself, as the people who have been up in Bathurst for the last three years have experienced, (i.e. the changes of what goes on during a period of riot). How a riot starts, what causes it, how it develops, how it slows down, how it picks up, how it becomes more or less aggressive, how the parties shift in and out of it are all essential considerations for the specific understanding of each riot situation. It is not like talking about murder or theft or whatever, where we have a discrete entity with identifiable people committing a particular type of behaviour which is measurable and clearly predefined. In a riot we are dealing with a dynamic collective behaviour, and because of that we are facing something which is particularly difficult to deal with in terms of the criminal justice process. We have seen from the trials that have been going on recently that it is very difficult to identify and punish an individual for what is, in fact, a collective act the threat of which takes on its force because of the collective act the threat of which takes on its force because of the collective nature of the behaviour. It is almost impossible to stereotype or single out an individual and say that he is responsible for doing this or she is responsible for doing that, but the dynamics of that behaviour are so much more significant because he or she was involved in a riot.

What I am suggesting is that the flexibility, and the fluctuation, which goes on within that behaviour itself is important to research as well, and not only that but the fact that too often the response to that collective behaviour is seen in simplistic terms. So you will find, in fact, that often the police response to any type of riot is the same type of response. They do not appreciate, or they are not able to appreciate because of the pressures on them, that the riot itself may be uniquely different, the parties within it are different, and the dynamic processes that go on as the riot develops are different in each case, and their very intervention in a very simple or straightforward or generalised way can change the nature of a riot in a very significant sense. I agree with Jeff Sutton's point that one needs to look at the specificity of a riot itself but when you are looking at that, you need to see it as a changing entity as well.

Tom Kelly, Legal Aid Commission

I was wondering if anyone had analysed any statistics if they were available on the success in prosecuting people in these circumstances particularly perhaps to compare the results with juries with the results of magistrates. When I was involved with defence of all the prisoners who were charged after the riots at Bathurst gaol and certainly when they got to the jury, and even before the magistrates who found no case to answer, it was very comforting from the defence point of view. Last week there was a jury that failed to agree — a substantial riot case that had been going on for some many weeks before arising over the Easter bike races at Bathurst the year before. Are there any statistics available or has anyone had a chance to do any research on that?

Jeff Sutton

As far as I know there are none. It would be a matter of simply going into the cases and counting them up. The result I think would be more illuminating if it were referred to particular modes of defence and the circumstances of the case, rather than simply counting the numbers involved.

Mark Findlay

There is within the research that we have been doing very little useful statistical information that you can draw out in terms of the nature of the defended cases because in the past there have been so few. The types of charges that have been laid until the mid '80's anyway have usually been the types of charge that an individual would plead to, or simply default bail, and so it would be an almost unrealistic balance to have a look at the defended cases and find out what success you have before the magistrate or before a jury. But in respect of the new batch that is coming up Tom Kelly has pointed to a very interesting piece of research to be done: to have a look at how the committals go and to have a look at the results of the trials, and whether we are dealing with successful prosecutions or not, because the charges have become so much more significant. When the charges are being laid on the basis of the old common law offences of "affray" and "riotous assembly" (which possess the potential for substantial prison sentences as a consequence of conviction) there will be many more matters being defended. The stakes are a hell of a lot higher, and, therefore, I think within the next 12 to 18 months that sort of research will be very useful because if we see a number of major trials going on where there is either no resolution in terms of hung juries or a very poor conviction rate, then that may go to further emphasise the fact that the criminal justice process in relation to controlling or regulating collective behaviour is perhaps not as efficient as some might like.

Frank Brennan

In Queensland during the recent SEQEB power dispute there has been a marked discrepancy between the testament of groups known as the Concerned Christians and the rest. The Concerned Christians are generally acquitted it seems on the basis that magistrates think that Concerned Christians who stand with crosses and sing hymns do not engage in conduct which is likely to harass SEQEB employees, whereas others who stand and shout things like "Victory to the ETU" or "Sack Joh" are engaging in conduct which is likely to harass SEQEB employees. I must confess that the niceness of that distinction still eludes me.

Unknown

A small point on policing. It is often interesting that it does not really matter what happens at — court the very fact that the people have been arrested and dragged off is what is important. It hardly comes in terms of a riot for those involved in the Franklin Dam blockade where at least 1000 people were arrested. All the charges were subsequently dropped but that did not matter they had all been dragged off, they had all been taken 10, 20 a 100 miles away. That was effective policing. Whether the charges were valid or not did not matter. It would have been twelve months later before they were decided anyway. That was the police decision in the spot and it had the desired effect.

Evan Whitton, Journalist

Dr Wardlaw and Father Brennan, in reference to the politicisation of the police and in connection with the nexus between political organisations and the Police Force, has any research been done on what tends to be a view that the police mutiny in Victoria in 1923 and the consequent social anarchy that followed from that, when the citizens looted and pillaged in the absence of the police, has terrified most governments? The fear of the social anarchy which is raised by the threat of a mutiny or strike leaves the two organisations in a situation where the governments very often fear to take what actions they might take against the Police Force which is engaged in malpractice, and so enter into a situation of confrontation in that the police have the ultimate weapon against the government.

The following Proceedings have been published and are available for sale at
the Government Printing Office, 390-422 Harris Street, Ultimo
and the Government Information Centre, Cnr. Hunter & Elizabeth Streets, Sydney.
All enquiries to: The Government Printer, P.O. Box 75, Pyrmont, N.S.W. 2009. Australia.

1967	1.	Sentencing. Fitness to Plead.
1968(1)	2.	Adolescent and the Law. Treat or Punish?
1968(2)	3.	Computers and the Lawyer.
1968(3)	4.	Drug Abuse in New South Wales.
1969(1)	5.	Judicial Seminar on Sentencing. Sentencing Project, Part I.
1969(2)	6.	Sexual Offences against Females.
1969(3)	7.	Bail
1970(1)	8.	Abortion.
1970(2)	9.	Male Sex Offences in Public Places.
1970(3)	10.	Sentencing Project: Part II, Probation.
1971(1)	11.	Parole of Prisoners Act 1966.
1971(2)	12.	Social Defence.
1971(3)	13.	Road Safety.
1972(1)	14.	Psychiatric Service for the Penal System.
1972(2)	15.	Armed Robbery.
1973	16.	Sentencing to Imprisonment — Primary Deterrent or Last Resort?
1973	17.	The Right to Silence.
1974	18.	Police Questioning and Confessional Statements.
1974	19.	Corporate Crime.
1974	20.	The Protection of Children.
1974	21.	An Examination of the Parole of Prisoners in N.S.W. — <i>out of print</i> .
1975	22.	Proposed Amendments to the N.S.W. Mental Health Act (1958).
1975	23.	White Collar Crime — Can the Courts Handle It?
1975	24.	Motoring Offences.
1975	25.	Compensation and Restitution for Victims of Crime.
1976	26.	Parole in Practice in N.S.W.
1976	27.	Treatment of Children Associated with Crime.
1976	28.	Corporate Crime (No. 2).
1976	29.	Complaints Against Police.
1977	30.	Probation.
1977	31.	Bail (No. 2).
1977	32.	The Dangerous Offender — Prediction and Assessment.
1977	33.	A Diversion Programme for Drinking Drivers.
1978	34.	Rights of the Mentally Ill.
1978	35.	Sentencing (1978) — <i>out of print</i> .
1978	36.	Unemployment and Crime — <i>out of print</i> .
1979	37.	White Collar Crime (No. 2).
1979	38.	State, Direction & Future of Corrections. Part II — Alternatives to Imprisonment.
1979	39.	State, Direction & Future of Corrections: Part I — Prisons — <i>out of print</i> .
1979	40.	Crime and the Family — Some Aspects of the Report of the Royal Commission on Human Relationships — <i>out of print</i> .
1979	41.	The Problem of Crime in a Federal System.
1980	42.	Problems of Delay in Criminal Proceedings.
1980	43.	Police Discretion in the Criminal Process.
1980	44.	Aboriginals and the Criminal Law — <i>out of print</i> .
1980	45.	Victims of Crime.
1980	46.	Index — Volumes 1-36.
1981	47.	The Old as Offenders and Victims of Crime.
1981	48.	Criminal Evidence Law Reform.
1981	49.	Child Welfare in the '80s.
1981	50.	Crime and the Professions: the Provision of Medical Services.
1982	51.	Community Justice Centres — <i>out of print</i> .
1982	52.	Costs and Benefits in Planning Crime Prevention.
1982	53.	The Criminal Trial on Trial.
1982	54.	Domestic Violence (including Child Abuse and Incest).
1983	55.	Crime and the Professions: The Legal Profession.
1983	56.	Street Offences.
1983	57.	Shoplifting.
1983	58.	A National Crimes Commission?
1984	59.	Computer Related Crime.
1984	60.	Offender Management in the '80s.
1984	61.	Incest.
1984	62.	Illegally Obtained Evidence.
1985	63.	Index — Volumes 1-60.
1985	64.	Gun Control.
1985	65.	Drugs and Crime.
1985	66.	Crime and the Professions — The Accountancy Profession.
1986	67.	The Control of Organized Crime.
1986	68.	The Jury in Criminal Trials.

INSTITUTE OF CRIMINOLOGY

Faculty of Law

The University of Sydney

173/175 Phillip Street,

Sydney, N.S.W. 2000

Australia.