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Policing the Plight of Indigenous Australians: Past Conflicts and Present Challenges

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In our paper, we address the unique characteristics of Australian society and we examine the nature, complexities and challenges that the police face in policing indigenous communities. We provide a synopsis of the historical context shaping contemporary policing in Australia, and we identify the Royal Commission into Aboriginal Deaths in Custody as the landmark inquiry shaping recent reforms in policing. We discuss recent trends and policy initiatives that have emerged since the Royal Commission. In particular, we examine police initiatives to implement community policing, restorative justice processes, recruitment and training programs, diversionary programs, and customary law initiatives and how they relate to the recommendations from the Royal Commission.

Key Words: policing minorities, Indigenous policing, Australian Police, minority communities, community policing, diversionary programs.

Introduction

One of the biggest issues facing governments of most contemporary democratic societies is managing the past, present, and future patterns of immigration. Australia is certainly no stranger to the political, social, and economic complexities posed by both legal migrants and the diverse population of refugees. Indeed, recent federal elections in Australia have been dominated by debates over migration and how the government might best handle past and future in-migration to Australia (see Robert

Manne, November 12, 2001, Sydney Morning Herald, "How a single-issue party held onto power"). The challenge of policing these migrant communities is certainly an important national agenda item for governments and police agencies throughout Australia (see Australian Institute of Criminology Conference Series, "Policing Partnerships in a Multi-Cultural Australia: Achievements and Challenges," October 25–26, 2001).

The challenge of policing multicultural societies is, however, somewhat different in Australia compared with the challenges faced by police agencies in other western democratic countries like the United States and the United Kingdom. One of the most important differences is the relative lack of ethnic ghettos or enclaves[2] in Australia compared with the United States and the United Kingdom (Burnley, 1999; Chan, 1997; Jupp et al., 1990; Marcuse, 1996; Viviani, 1996). Even in Sydney, which has Australia's highest concentrations of migrant populations and is a significant city of immigrants on a world scale, very few areas warrant the classification of ethnic ghetto (Burnley, 1999).[3] Analyses of migrant settlements over the past 100 years of Australian history generally suggest that there is a characteristic pattern of dispersal. That is, initial first-generation migrant clusters tend to diffuse very quickly in Australia as language and employment barriers are overcome and as residential mobility and intermarriage within the second and subsequent generations rises (Burnley, 1999; Chan, 1997; Jupp et al., 1990; Price, 1993; Viviani, 1996).

With a few notable exceptions,[4] one of the primary multicultural policing challenges in contemporary Australia is that of policing indigenous Australian communities.[5] Since the early 1980s, the challenge of policing indigenous Australian communities has been a topic of much public, academic, and political attention. Newspaper reports (e.g., Sydney Morning Herald, March 23, 1991), academic papers (Cunneen, 1990; Tyler, 1999), government reports (NSW Office of Aboriginal Affairs, 1994; NSW Office of the Ombudsman, 1994), and, most significantly, a Royal Commission into Aboriginal Deaths in Custody (Johnston, 1991) universally condemn historical and contemporary approaches to policing indigenous communities. Indeed, Elliot Johnston commented in the final national report that: "police intervention in the lives of Aboriginal people throughout Australia has been arbitrary, discriminatory, racist and violent" (Johnston, 1991, Vol. 2, 13.2.3).

The plight of policing indigenous Australians has a long and unhappy history. Within Australia, most commentators argue that the colonial systems of power, control, and policing have fundamentally shaped contemporary conflicts between police and Aboriginal people (see, generally, Broadhurst, 1997; Cunneen, 2001). Cunneen (2001) and Coe (1980), for example, argue that understanding Australia's

200-year history of the oppression of Aboriginal people is vital to identifying the structural, political, and economic basis that has shaped the discriminatory approach taken by Australian police in dealing with indigenous people.

Australia's indigenous people are grossly overrepresented as participants in the criminal justice system.[6] Australia's Aborigines make up just 1.1 percent of the total population (Australian Bureau of Statistics, 1999), yet:

> Aborigines are 9.2 times more likely to be arrested, 6.2 times more likely to be imprisoned by lower courts, 23.7 times more likely to be imprisoned as an adult and 48 times more likely to be imprisoned as juveniles than non-Aborigines.
>
> (Broadhurst, 1997, p. 407)

In Australia, more than 70 percent of all indigenous people reside in remote rural areas (Australian Bureau of Statistics, 1996; Roberts and Doob, 1997). At the same time, 85 percent of all Australian residents occupy 1 percent of the Australian continent and most of these coastal dwellers live in the seven coastal cities. Thus, Australian cities (where most people live) typically have dispersed populations of ethnic and indigenous people (see Jupp et al., 1990), whereas the vast rural areas, particularly in Western Australia and the Northern Territory, are still home to the great majority of indigenous Australians. These types of geographic distributions of Australia's population generate great logistical and cultural challenges for police in Australia.

Of particular note are the challenges faced by police in Western Australia and the Northern Territory. Both of these states[7] have well above the national average in their proportion of Aboriginals, the proportion of Aboriginals who can speak an Aboriginal language, and the size of the geographic areas under Aboriginal control. Western Australia and the Northern Territory also have very high Aboriginal participation in imprisonment.[8] Broadhurst (1997) therefore concludes that areas such as the Northern Territory and Western Australia, which rank highest on indicators of "cultural strength" (e.g., proportion of Aborigines who spoke an Aboriginal language, saw elders as important, voted in Aboriginal and Torres Strait Islander Council elections, and participated in various cultural activities and ceremonies) and highest on indicators of "stress" (e.g., proportion of single-parent families, amount of unemployment, and extent of unsatisfactory housing and service access), thereby have greater potential for conflict with the dominant society and thus have the highest police or prison custody rates.

Effective policing of Australia's indigenous communities has been historically undermined by the highly centralised nature of the structure of police in Australia. The centralised system of policing provides little basis for diversity and localised

approaches to policing local communities, particularly rural Aboriginal communities that constitute the vast majority of all Aboriginal communities. Australia comprises eight state, territory, and federal police departments that collectively police 19 million people living across 7,692,030 square kilometres (*World Fact Book*, 2001). By contrast, in the United States, more than 15,000 police departments are responsible for providing police services to 280 million people residing across more than 9 million square kilometres (*World Fact Book*, 2001). This degree of decentralisation in American policing provides a natural basis for police agencies to develop and implement local approaches for handling local problems. The long-term lack of decentralised police services in Australia is, at some level, to blame for the enormous social distance experienced between many indigenous Australian communities and the police.

Addressing the unique characteristics of Australian society, our paper will examine the nature, complexities, and challenges that the police face in policing indigenous communities. We begin by providing a synopsis of the historical context shaping contemporary policing models for policing indigenous Australians. We then introduce the reader to the Royal Commission into Aboriginal Deaths in Custody, a landmark inquiry in Australia that shaped much of the discourse and direction for policing reform in Australia over the last decade. Next, we provide an analysis of how policing has changed (or has not changed) in the decade since the Royal Commissioners submitted their findings. We conclude by examining the challenges that face police in Australia as they seek to alter the historically poor relations with indigenous Australians and bring Australian policing into the 21st century.

Policing in Australia

Indigenous Australians (including Aboriginal and Torres Strait Islanders) are 27 times more likely to find themselves in police custody than non-indigenous people and, during August 1995, represented 31.8 percent of all persons held in custody by the police (Cunneen and McDonald, 1997). In this section, we examine some of the historical context of Australian policing with a view to understanding some of the characteristics of police in Australia that have historically compounded poor relations between the police and indigenous people.

Currently, there are eight police agencies in Australia (six state police agencies, one territory police agency, and the Australian Federal Police that has federal jurisdiction as well as local jurisdiction over the Australian Capital Territory). In contrast to countries that have highly decentralised police structures (like Canada and the United States), all police services in Australia are delivered at the state level. As of June 2000, there were 43,722 sworn police officers in Australia, including

more than 13,000 sworn officers in the New South Wales Police Service, 10,000 officers in the Victorian Police Service, and 7,700 sworn personnel in the Queensland Police Service. About 20 percent of all sworn officers in Australia are female, and 0.66 percent are defined as Aboriginal Police Aides, Special Constables, or Liaison Officers (Australian Institute of Criminology, 2001).

The centralised, state-based nature of policing in Australia is historically grounded in the colonial history of Australia. Australia was settled by England in 1788 as a convict colony. The first colonies in Australia were in New South Wales and what is now called Tasmania (formerly Van Dieman's Land). Most of the other states in Australia were proclaimed colonies by the mid-1800s. In the early years of Australia's history, "each colony had its own laws, customs, barriers, monetary regulations and immigration policies" (Pentony et al., 1995, p. 13), and the individual states self-determined their economic, political, and social systems. The self-rule of the individual colonies established a parochial approach to early (as well as contemporary) politics. Over the years, this parochial nature of Australian society has created many problems. For example, New South Wales practiced free trade policies, whereas the second most populous colony, Victoria, was Protectionist. During Australia's early years, the excise placed on goods from some of the colonies/ sometimes made it more costly to transport goods between the colonies than to transport goods overseas. From the outset, early Australian society was characterized as a group of colonies that had no special relationship to each other, except that they happened to be sharing the same continent and they had been settled by Anglo-Saxon convicts and free settlers arriving from England.

Chappell and Wilson (1969) identify the Sydney Police Act of 1833 (NSW) as an important landmark in the development of police forces in Australia. The Sydney Police Act differed from the Metropolitan Police Act of 1829 in England in that "a substantial part of the Act was devoted to the removal and prevention of nuisances and obstructions" (Chappell and Wilson, 1969, p. 9). Historians generally suggest that the absence of local institutions in colonial Australia created a vacuum for police to assume much broader social responsibilities than their overseas counterparts, giving them extensive powers to administer not only criminal laws but also public health and hygiene laws (Chappell and Wilson, 1969; King, no date). Not only did early Australian police have extensive powers to intervene in people's day-to-day lives, but the police themselves were not exactly models of propriety. Chappell and Wilson (1969) make the following observation:

> If it were found difficult to obtain men of suitable quality for the police in London, it is not hard to imagine how much more difficult it was to recruit suitable personnel for the police in New South Wales and the other Australian colonies from among a population largely composed of convicts and emancipists.
>
> (Chappell and Wilson, 1969, pp. 9–10)

By the time of Federation in 1901, all of the Australian states were centrally controlled by their respective state governments and each of the states had cobbled together police forces. By the turn of the century, police forces in Australia could be characterized as being "thoroughly unpopular" (Ward, 1968, p. 154), comprising substandard personnel possessing substantial powers that provided the legal basis for the police to perform a wide range of extra-legal activities. Chappell and Wilson (1969) suggest that this breadth of police responsibility "brought the members of the constabulary into more frequent contact with the public in situations of potential conflict than would normally be the case" (1969, p. 30).

The creation of an English legal and policing system in Australia had particularly devastating results for Australia's indigenous people. The imposition of Terra Nullius[9] under International Law deemed the Australian continent to be empty of any sort of civilization and thus allowed the British to impose British sovereignty and place all people (including indigenous persons) under the British system of law (Chisolm and Nettheim, 1997). Lippmann (1991) describes Australian indigenous people during these early colonial days as being "outside of the law, a sometimes feared nuisance whose eradication, whether it be by natural selection or justified force, was seen as paramount if Australia was to become a civilised nation" (1991, p. 13).

Since the early 1800s, dozens of laws, regulations, and procedures have been implemented by state and federal governments to oppress, control, coerce, and manipulate the lives of indigenous people. For example, the Aboriginal Protection Act of 1869 (Vic) separated the legal status of indigenous people from other Australians (Lippmann, 1991; Rowley, 1970); the Commonwealth Electoral Act of 1918 (Cth) officially excluded indigenous people from the right to vote in federal elections and was not repealed until 1962 with the passing of the Commonwealth Electoral Act of 1962 (Cth)[10]; and Queensland's Aboriginal Protection Act and Restriction of the Sale of Opium Act of 1897 (Qld) that was adopted by most other states created a law that designated any person who was Aboriginal or of Aboriginal descent as "state property" (Chesterman and Galligan, 2001, pp. 39–41). This particular law placed restrictions on indigenous persons' freedom of movement, freedom of financial autonomy, freedom to work, and freedom to practice spiritual beliefs. The law also provided for the removal and separation of indigenous children from their families (Rowse, 2000).

After World War II, the segregationist and discriminatory approach to dealing with indigenous people in Australia slowly evolved into a more assimilatory approach to indigenous issues that was, in many ways, as devastating to Aboriginal people as the earlier racist policies. By 1975, the Whitlam Government had adopted the Racial Discrimination Act of 1975 (Cth) that saw all forms of federal discrimination outlawed. Nonetheless, many State governments continued to enact state legislation and refuse equal treatment for indigenous persons before the law (see Cunneen, 2001; Cunneen and Liebsman, 1995; see, also, *Koowarta v. Bjelke Peterson* (1982). By the 1990s, the High Court of Australia upheld two cases that recognized indigenous land propriety rights (see *Mabo v. Queensland (No. 2)* (1992) and the *Wik Judgement* (1996)). In many ways, these two land rights court cases paved the way for at least some alteration in the historical control imbalance experienced by indigenous Australians at the hands of white Australians.

Against this backdrop of political, economic, and social persecution of indigenous people in Australia over the past 200 years, the police, as the primary vehicle of state control, have perpetuated a system of discrimination, abuse, and conflict against Australia's indigenous communities into the 21st century. Indeed, Cunneen (2001) summarizes the situation by stating:

> [T]he historically specific experience of Indigenous people provides compelling reasons for considering the use of violence against them as institutionalised racist violence directly connected to the colonial process. The racialised constructions of Indigenous people continue to provide context in which police decision-making occurs.
>
> (Cunneen, 2001, p. 128)

The Royal Commission into Aboriginal Deaths in Custody

The Royal Commission into Aboriginal Deaths in Custody (RCIADC)[11] is one of the most thorough investigations into the policing of indigenous people in Australia. It is a telling account about the way in which indigenous people in custody have been treated by police officers and of the manner in which "frontier" policing practices resulted in the overrepresentation of indigenous people in custody (see, also, Broadhurst, 1997). The Royal Commission is largely regarded as a watershed inquiry that revealed atrocities and compelled Australian police to become better equipped to police not just indigenous people but all people from a wide range of ethnic backgrounds. The Royal Commission revealed to the masses the plight of indigenous Australians and how archaic and obsolete police practices were, particularly in rural areas, in effectively policing indigenous people. In the years since the completion of the final report, police practices have been largely shaped by the Commission's recommendations. We explore these issues below.

The Royal Commission into Aboriginal Deaths in Custody was established on October 16, 1987, to inquire into and report on Aboriginal people who had died in police or prison custody or in any other place of detention since January 1, 1980. The catalyst for its inception was "public agitation" led by members of the Aboriginal community (Johnston, 1991: 1.1.3). Aboriginal activists had started a long campaign to protest against the large number of Aboriginal deaths in custody (Kerley and Cunneen, 1995). The campaign began with the death of John Pat in 1983. The National Committee to Defend Black Rights began informing other Aboriginal people of the circumstances of John Pat's death and of the failed prosecutions against police officers for charges of manslaughter (Corbett, 1991). This raised the concern of many Aboriginal people, and as other deaths occurred, the national campaign gained momentum. Increasingly, the non-Aboriginal community also joined with the Aboriginal community in questioning why there were so many Aboriginal deaths in custody. Commissioner Johnston acknowledged in the final national report:

> It is a revealing commentary on the life experience of Aboriginal people and of their history that it would have been assumed by so many Aboriginal people that many, if not most, of the deaths would have been murder committed if not on behalf of the State at least by officers of the State. But disquiet and disbelief in official explanations was not only expressed by Aboriginal people; many non-Aboriginal people shared the assumption that police and prison misconduct would be disclosed by a Royal Commission. Thus many non-Aboriginal people, whilst not sharing the life of Aboriginal people, had seen and heard sufficient evidence of the mistreatment of Aboriginal people to share their expectation that Aboriginal people would suffer and die from the same discrimination and brutality as they experienced during life.
>
> (Johnston, 1991: 1.1.3)

The campaign ultimately attracted international attention. Gradually, the negative publicity generated by the large number of deaths, particularly during 1987 when there was an Aboriginal death in custody almost every two weeks (20 deaths occurred in 1987 alone), compelled the Australian government to establish the Royal Commission into Aboriginal Deaths in Custody (Corbett, 1991). A prominent Queens Counsel, James Muirhead, was initially appointed as the National Commissioner, followed by five other Commissioners, to conduct inquiries in the six Australian States and the Northern Territory (no deaths had occurred in the Australian Capital Territory during the relevant period). Commissioner Johnston replaced Commissioner Muirhead (who had retired) as the National Commissioner on April 28, 1989. The inquiry considered 99 deaths that had occurred between January 1, 1980, and May 31, 1989. Although the original terms of reference were framed in a way that limited the inquiry to investigating the deaths per se, they were later extended to include a consideration of the underlying social, cultural, and legal issues that may have had a bearing on the deaths.

The Royal Commission examined files maintained by agents of the state of each deceased that contained details of their birth, adoption, schooling, medical history, and involvement with the criminal justice system. The Commissioners also conducted interviews and received submissions. From this information and from historical and anthropological accounts, the Commissioners constructed a picture that told the story of the life of each deceased person investigated. The final national report, consisting of five volumes, was tabled on April 15, 1991, and made 339 recommendations. The inquiry cost around $A40 million (Millikin 1991, p. 7).

It was acknowledged that the expectation, on the part of Aboriginal people, that police misconduct and negligence would be uncovered by the Royal Commission in relation to some of the deaths, was not unreasonable in light of the historical context (Johnston, 1991: 1.4.2). Ultimately, however, the Royal Commission concluded that the deaths were not as a result of any system defect per se. Indeed, "as reported in the individual case reports which have been released, [the] Commissioners did not find that the deaths were the product of deliberate violence or brutality by police or prison officers" (Johnston, 1991: 1.2.2). It was found, however, that Aboriginal people were 23 times more likely to die in custody than non-Aboriginal people primarily because Aboriginal people were overrepresented in police cells and prisons (Biles et al., 1990). Interestingly, "Aboriginal people who died in custody were more likely to have died in police custody rather than in prisons" (whereas non-Aboriginal people were more likely to have died in prison) (Johnston, 1991: 5.1.3). In fact, of the 99 deaths investigated, 63 occurred while in police custody (64 percent), and only 36 occurred in prison or in a juvenile detention center.

The report of the Royal Commission has been widely cited and used in federal, state, and territory government law reform over the past 10 years (Atkinson, 1996, p. 4). Robyn Lincoln and Paul Wilson (2000) note that "more than any other work done in the field of Aboriginal criminal justice studies, the Commission's work provides a wealth of information" (2000, p. 205) and a sound basis for police operational reform. Similarly, Commissioner Johnston QC (1991), stated in the final national report:

> There has never before been such a comprehensive inquiry as that conducted by this Royal Commission. The whole range of societal and historical factors which impact on Aboriginal lives came into focus from the investigations of the deaths of so many of them which occurred whilst ostensibly under the care and protection of the State.
>
> (Johnston, 1991: 1.2.16)

Prior to the Royal Commission, no other thorough examination of the relationship between Aboriginal people and police had been conducted, even though since colonization there has existed a deep animosity between the two groups (Cunneen, 2001; Foley, 1984; Harris, 1996). This animosity stemmed from an historical power

relation in which Aboriginal people had been ordered, controlled, and monitored by police who acted as representatives of the state. As Lincoln and Wilson (2000) note, however, the inquiry in many ways did not go far enough. The final report has been criticised for a number of reasons, including that it did not fully consider the involvement of Aboriginal people in the criminal justice system, that it produced a descriptive rather than an explanatory report, that there was too much focus on "Aboriginality" and not enough focus on custodial practices, that it inadequately detailed the process in which its recommendations were to be implemented, and that it failed in its investigation to go beyond the concept of race as constructed by legal rhetoric (Committee to Defend Black Rights, 1989; Craigie, 1992; Harding, 1999; Harris, 1996; Lincoln and Wilson, 2000; McDonald and Cunneen, 1997; National Aboriginal and Islander Legal Services Secretariat, 1989; Purdy, 1992; Sackett, 1993; Whimp, 1994). These deficiencies have been identified as having contributed to the finding that none of the deaths were "the product of deliberate brutality or violence by police or prison officers" (see, again, Johnston, 1991: 1.2.2).

Although the inquiry found that there had been no foul play on the part of police and prison officers in relation to the 99 deaths investigated, it highlighted the tensions that existed between Aboriginal and non-Aboriginal people. Commissioner Johnston QC (1991) recognized that the worst type of relationship between Aboriginal and non-Aboriginal people was that between Aboriginal people and police officers (Johnston, 1991: 1.4.15-1.4.17). The hostility was even more profound in situations where police detained Aboriginal people in custody. Police detention of Aboriginal people compounded the oppression and control historically experienced at the hands of police officers. When coupled with other socioeconomic disadvantage, Aboriginal people in police custody experienced acute feelings of powerlessness (Broadhurst, 1997; see also: Tittle, 1995).

It has been widely acknowledged that indigenous Australians are the most disadvantaged group of the Australian population, based on all accepted social indicators (Bottomley and Parker, 1999; Johnston, 1991). The Royal Commission into Aboriginal Deaths in Custody identified many factors that served as indicators of the level of oppression and disempowerment suffered by Aboriginal people generally. Aboriginal people were found to suffer from racism, high unemployment, poverty, undereducation, and poor health (Johnston, 1991; see, also, Bottomley and Parker, 1999, p. 243).

Of the ninety-nine, eighty-three were unemployed at the date of last detention; they were uneducated at least in the European sense - or under-educated - only two had completed secondary level; forty-three of them experienced childhood separation from their natural families through intervention by the State authorities, mission or

other institutions; forty-three had been charged with an offence at or before aged fifteen and seventy-four at or before aged nineteen. (Johnston, 1991: 1.2.17)

This overwhelming disadvantage, coupled with a sense of disempowerment particularly when confronted with police custody, was manifested in the deaths investigated by the Royal Commission. Table no. 1 examines the causes of death occurring in police and prison custody.

Table no. 1: Cause of Death by Type of Custody[12]

	Police Custody	**Prison Custody or Juvenile Detention Center**
Self-inflicted deaths	23	11
Head injury	11	1
Gunshot	2	2
Other external trauma	1	2
Drug use	2	2
Alcohol use	5	0
Natural cause	19	18
Total	63	36

As table 1 shows, Aboriginal people were much more likely to die from self-inflicted deaths in police custody than in prison custody. In fact, 23 of the 63 deaths in police custody were self-inflicted (36.5 percent). The average age for those who died by hanging[13] in police custody was 25, and only one of those who died from self-inflicted deaths (either by hanging or by a self-inflicted injury) in police custody was female. Most of those who hanged themselves in police custody had been detained for under 2 hours (14 cases). Seven had been detained between 2 and 6 hours, and one had been detained between 6 and 8 hours.[14] Generally, the inquiry revealed glaring deficiencies in the standard of care and accommodation for police custody. The standard of the police cell accommodation was found to be lower than that of the prison cell accommodation. Commissioner Johnson described some of the police cells as “highly unsatisfactory,” “appalling,” and “dungeon-like” (Johnson, 1991: 3.3.56). The main architectural deficiencies identified in relation to the police cells were that they were often isolated from offices and other facilities (Johnston, 1991: 3.3.34). Also, insufficient medical services were available in police custody to deal properly with problems of substance withdrawal and other medical conditions (Johnston, 1991: 3.3).

Overall, drunkenness in a public place was the most overwhelming reason for police detention. Most Aboriginal people in police custody were detained as a means of

"protection," until they became sufficiently sober for release (Johnston, 1991: 1.6.2). The final national report strongly recommended (recommendations 79 to 91) that drunkenness be decriminalised and that procedures be implemented that would allow a greater number of Aboriginal people to be diverted from police custody because of public drunkenness. All but two of those who died by hanging while in police custody had a blood alcohol reading that was higher than the maximum allowed when driving.

The power imbalance between Aboriginal people and police officers has been well documented as having resulted from an historical context that grew from the colonization of Australia over 200 years ago by European invaders (see Broadhurst, 1997; Cunneen, 2001; Harding et al., 1996; O'Shane, 1992). Various factors would have contributed to the feelings of powerlessness experienced by Aboriginal people in police custody. Aside from their prevailing low socioeconomic status, the deceased who committed suicide and who were considered by the Royal Commission were generally young, male, alcohol dependent, and had been isolated from family and friends for a period of time in substandard police cell conditions.

Contemporary Issues for Policing Indigenous Communities

The Royal Commission into Aboriginal Deaths in Custody was a watershed inquiry that concluded with a multitude of recommendations that aimed to improve policing practices and, more generally, reduce the economic, social, and political deprivation of Aboriginals in Australia. The majority of the recommendations made by the Royal Commission related directly to reforming police practices. In particular, the Commission made a number of recommendations to remedy relations between indigenous people and police and to divert indigenous people away from custodial detention.[15] In this section, we critically examine some of the most significant recent policing initiatives that relate to the Royal Commission recommendations.

The most common types of programs that have been implemented by police agencies since the Royal Commission include the adoption of "community policing," implementation of diversionary programs, cross-cultural training and education, and granting of greater Aboriginal autonomy regarding justice issues. Cross-cultural training and education has included the recognition that police officers had little knowledge of "the effects of colonisation and dispossession on Aboriginal people" (Cunneen, 2001, p. 210). A description of the role of police during the "frontier" and "protection" periods of Australian colonial history has therefore been adopted as an important training device in some jurisdictions. Attempts have also been made to incorporate Aboriginal customary law within the criminal justice process and for indigenous communities to assist in directing the

punishment of offenders (Parkinson, 2001, p. 222). Overall, there has been a greater attempt by the various police departments to consult with Aboriginal and Torres Strait Islander people in relation to policing practices. In Queensland, for example, "extensive consultation has been undertaken with Aboriginal and Torres Strait Island consultants working for the [Queensland Police Service]" to produce effective police training programs and to develop policing strategies (Melville et al., 1994, p. 258). We examine these and other police initiatives below.

Diversionary Programs

Within the Aboriginal population, Aboriginal youth are the most vulnerable to the criminal justice system (see Broadhurst, 1997; Cunneen, 2001). Cunneen (1996) reports: "in 1990 Aboriginal young people were 62 times more likely to be incarcerated in Western Australia, 16 times more likely in NSW, and 12 times more likely in Queensland" (Cunneen, 1996, p. 19). Cunneen (1996) asserts that other research indicates similar figures in other states, and the most recent data suggest that there has been little reduction in these levels. Smandych et al. (1995) affirm that a major reason why Aboriginal youth are more likely to be arrested rather than reported is because police believe they will not attend a panel or court. This label of arrest is then carried through the system, where "a caution is less likely for Aborigines because they were arrested in the first instance—and this initial contact is perceived as reflecting a more serious offence or an intractable offender" (Smandych et al., 1995, p. 254). Clearly, diversionary programs and community policing approaches are widely recognized as optimal programs for Aboriginal youth, especially when most offences involve minor stealing (see Wootten, 1995).

One family of diversionary programs - restorative justice - has gained particular prominence most recently in Australia. Restorative justice, in the broadest sense, refers to many initiatives ranging from "diversion from formal court process, to actions taken in parallel with court decisions, and to meetings between offenders and victims at any stage of the criminal justice process" (Daly, 2000, p. 168). The trend toward restorative justice programs, however, poses another hurdle for the police to overcome during the post-Royal Commission period. Indeed, Daly (2000) notes the scepticism of Aboriginal people of any new justice measure introduced by a dominant "white" system, however well meaning or well resourced. An illustration of the police/Aborigine divide and how it can be acted out is provided in the restorative justice initiatives that are applying conferences as an alternative diversionary justice strategy. In a South Australian report on Aboriginal and non-Aboriginal contact with the restorative justice program, 19 percent of Aboriginal youth, compared with 8 percent of non-Aboriginal youth, did not go forward with the conference (see Doherty, 1999). The major reason was nonattendance, and Daly

(2000) tentatively concludes from her own research that this is because Aboriginal youth are disaffected with any justice system process, whether it is caution, conference, or court. On the other side, police make relatively lower referrals to formal caution and higher referrals to court for Aboriginal than for non-Aboriginal people (Daly, 2000). Daly (2000) suggests that this low participation stems from Aboriginal youth having a greater likelihood of previous contacts with the police (for a variety of reasons) and occurs because Aboriginal youth are less likely to complete agreements (see, also, Broadhurst, 1997).

Despite a lack of systematic analysis of the underlying factors leading to the low participation rates of Aboriginals in conferencing, the outcome research on conferences is relatively positive for Aboriginals compared to their outcomes for court proceedings (Daly, 2000). According to Daly's (2000) research in South Australia, "offenders report greater procedural justice (being treated fairly and with respect), higher levels of restorative justice (the opportunity to repair the harm they have caused), and increased respect for the police and the law" (2000, pp. 176–177). Victims, too, reported a "higher sense of restorative justice (e.g., recovery from anger and embarrassment) and high levels of procedural justice" (Daly, 2000, pp. 177). Analysis by race and ethnicity showed no differences in perceptions of procedural justice and, when interviewed and specifically asked, young people (offenders) and victims rarely felt disadvantaged in the conference because of their race-ethnic identity (Daly, 2000). Daly (2000) also found that conference dynamics worked more smoothly when, in addition to offenders (or victims), there were other Aboriginal participants at the conference, such as police aides, community workers, or Aboriginal Legal Rights Movement representatives. Thus, it would appear that the establishment of conferences as an alternative and diversionary justice measure is most likely a positive step toward improving indigenous perceptions and reducing their involvement in the formal aspect of the criminal justice system.

Indigenous Recruitment

The Royal Commission recommended the need for negotiation and self-determination in relation to the design and delivery of criminal justice services. In a comment on the current literature, however, Mugford (1997) notes a general failure to implement adequately and effectively many of the recommendations of the RCIADIC, particularly in relation to negotiation and self-determination. The importance of consultation and negotiation with indigenous communities is well documented in the Royal Commission's final report and is closely related to other recommendations that implored police departments throughout Australia to adopt policies to attract and recruit indigenous people into the police service. Under the auspices of the RCIADIC, substantial funding was set aside for each police

organisation to develop and implement its own recruitment strategy (Kamira, 2001, p. 78). In 1999, most police organisations had an "Indigenous Unit," but commentators still lamented the ad hoc approach to indigenous recruiting (Kamira, 2001). One question constantly presents itself: Despite the Royal Commission's recommendations and despite the amount of funding provided for targeted indigenous recruitment, why is there such a paucity of indigenous police officers? Little research has been conducted into the experience of serving indigenous men and women; however, Kamira (2001) proposes some factors likely to be contributing to this phenomenon.

Kamira (2001) suggests that Australian police agencies continue to reinforce systemic attitudes, values, and beliefs that cause officers to be unconsciously and unintentionally discriminatory despite the multitude of efforts to reform the police since the Royal Commission. Recruiting policies can still reflect middle class non-indigenous, non-migrant sensibilities. For example, "[t]he Australian Federal Police (AFP) Indigenous Career Development and Recruiting Strategy receives many applications which fit the AFP criteria [however] few applicants make it past the testing. The main barrier is the psychological profile which appears to favour non-Indigenous middle-class applicants" (Kamira, 2001, p. 79).

Recruitment problems do not end there. Some indigenous people feel they are being marginalised if sent to a community because first and foremost they were recruited as police (Kamira, 2001). Another problem is:

> [The] misguided belief that indigenous people are one happy harmonious society. One police officer in Queensland was sent from the academy to a country town because he was Indigenous. The local community could not identify with him because they thought he was a Torres Strait Islander and the white community did not identify with him because he was black. The result was that he was so unhappy and lonely that he resigned.
>
> (Kamira, 2001, p. 79)

It appears that without adequate training and appropriate systemic support, indigenous recruits can end up individually burdened with the entire responsibility and conflict of the police/Aboriginal divide. Intensely exacerbating this problem is the lack of power and influence that indigenous recruits are typically given within police organisations (Wootten, 1995; Divakaran-Brown and Williams, 1997).

According to Kamira (2001), it is these issues that lead to the poor retention rates of Aboriginal recruits. It appears that, although external funding strategies have created widespread indigenous recruitment programs, an important future step is for these programs to become more internally integrated and funded in order that they become more deeply and systemically supported. Indeed, Kamira (2001) asserts that police

organisations are recruiting indigenous police to satisfy external requirements, not because they wish to be truly representative of the community.

Reducing Social Distance

Despite the ongoing problems of attracting and retaining indigenous people to the police occupation, Australian police agencies have implemented a number of initiatives to reduce the social distance between the police and indigenous people. At one end of a range of "outreach" programs is an Aboriginal visitor's scheme in which voluntary Aboriginal workers visit Aboriginal detainees at any time of the day or night in police cells to ensure their general safety and well-being (Divakaran-Brown and Williams, 1997). This scheme assists police in their duty of care to detainees and relies on a significant degree of goodwill and commitment from the Aboriginal community. Despite being established in South Australia since 1989, workers only started receiving training and remuneration in 1999 (Kamira, 2001). A recent evaluation of the visitor's scheme confirmed its importance, recognized the calming effect that Aboriginal visitors have on agitated detainees, and acknowledged that the scheme could be central to the significant reduction of deaths in police custody in recent years (Divakaran-Brown and Williams, 1997).

One entirely Aboriginal initiative in the Northern Territory is a Night Patrol program, in which voluntary nonpolice community members attend disturbances in the town camps and attempt to settle disputes when they begin and not after they have "exploded" (Wootten, 1995). Generally, the police do not attend the scene of a disturbance unless requested by the Night Patrol. "The [City] Council mediates the dispute at a community meeting usually the next day, where issues are publicly discussed and unacceptable behaviour condemned" (Wootten, 1995, p. 198). The main criticism of such programs is simply that the patrols are usually voluntary and underresourced (Wootten, 1995; see, also, McDonald and Whimp, 1995). Nonetheless, Wootten (1995) reports that the general consensus amongst police is that the crime rate and level of antisocial behaviour has significantly decreased and that good relations and a high degree of trust have been built up between police and Aboriginal organisations (see, also, HRSCATSIA, 1994).

Another outreach initiative that has been trialed in the state of Victoria is the community justice panel, which liases with police, the courts, corrections, and community services (Wootten, 1995). This initiative involves panels of Aboriginals that are on call on a roster basis and are contacted by police when the police have a problem involving an Aboriginal (Wootten, 1995). The observed range of interventions observed with this program include taking a person affected by liquor home or to a shelter, quieting a rowdy party, finding care for a child or young

person, helping with bail, and giving reassurance to an arrested person (Wootten, 1995).

Community Policing

Closely related to the recommendations of the Royal Commission for the police to reduce their social distance with Aboriginal communities is the need to implement community policing across Australian policing, particularly in indigenous communities. Cunneen (2001), however, comments that the rhetoric of community policing sits uncomfortably with evidence showing the increased use of tactical and paramilitary police groups in Aboriginal communities during the 1980s and 1990s. Cunneen (2001) suggests that while the principles of community policing might have been understood and implemented in most Australian communities, it seems that Aboriginal communities have remained outside any mainstream effort to implement community policing, thus undermining the foundation by which the police might have improved police-Aboriginal relations. The apparent dualistic approach to implementing community policing further serves to undermine the relationship between police and indigenous people.

To overcome these problems, the basic principles of community policing must extend to indigenous communities both to improve the relationship between police and indigenous communities and to institutionalise community policing into mainstream policing practices. Police departments must be truly willing to decentralise their control of resources, devolve the locus of power, allow indigenous communities to identify and coproduce priority problems, and implement innovative problem-solving strategies. These basic elements of community policing appear largely underdeveloped in Australian policing, particularly in relation to policing indigenous communities.

Contemporary efforts to decentralise police resources in Australia under the auspices of community policing pose many historical and structural barriers. The state-based structure of police services makes it a major undertaking for the police to decentralise decisionmaking and to allocate scarce police resources. Some commentators lament the idea of decentralisation of police services, seeing the process as potentially "leading to a loss of accountability, ineffective central monitoring and variation in application and commitment to Indigenous issues" (see Cunneen, 2001, p. 210). The double-edged sword of community policing is not unique to the particular issues facing police in Australia (see Bracey, 1992). Thus, Australian police need to decentralise the delivery of police services and at the same time develop procedures to ensure accountability and commitment to applying best practice principles in policing indigenous communities.

Community consultative committees also appear to have failed within Aboriginal communities (see Cunneen, 2001). The New South Wales Office of the Ombudsman's report (1995) suggested that "police/community consultative groups are still manipulated, or Aboriginal people selected for their compliance" (1995, p. 44). In many cases, it appears that many Australian police, particularly those in rural areas, simply do not have the skills to identify and involve cross-sections of Aboriginal communities in their problem-solving efforts.

Additionally, one of the key recommendations from the RCIADIC was to change cultural attitudes of the police toward Aboriginal people. Kamira (2001), however, reports that "cultural change within the police force toward Aborigines has been slow" (2001, p. 75). In a staff survey examining police attitudes towards various aspects of community policing, "middle-ranking officers were found to be most resistant to change and least supportive of community policing ideas, whereas the higher ranks and beat police showed more enthusiastic support" (Chan, 1997, p. 205). Unfortunately, it is the middle-ranking group that dominates police stations in rural townships with significant Aboriginal and non-Aboriginal populations and "these are the areas where over-policing is most likely to occur, particularly as a result of pressure from dubious law and order campaigns generated by the non-Aboriginal populations" (Wootten, 1995, p. 184).

Decriminalization of Drunkenness

One important issue uncovered by the Royal Commission was the role that drunkenness played in Aboriginal deaths in custody. One recommendation of the final report was for the states to consider decriminalising public drunkenness. Despite strong RCIADIC recommendations, a very high number of arrests or detentions continue for public drunkenness and, as recently as 1995, Victoria, Queensland, and Tasmania had still not decriminalised drunkenness (Wootten, 1995). Moreover, the states and the Northern Territory have an inadequate number of shelters for sobering up, and commentators continue to observe that charges such as offensive behaviour or language or loitering are still being used when the real problem is drunkenness (see Wootten, 1995). McDonald and Whimp (1995) suggest that accompanying the decriminalisation of public drunkenness must be the provision of adequate alternatives to police cells for people who need to be detained for their own or other people's safety.

> Also, involvement of Aboriginal people and organisations in the management and day-to-day operation of these alternative care facilities should be sought and encouraged, and their

> integration with longer term programs which enable Aboriginal people to deal effectively with problematic drinking behaviour and lifestyles should be promoted.
>
> (McDonald and Whimp, 1995, p. 198)

Aboriginal Customary Law

Attempts have also been made to incorporate Aboriginal customary law within the criminal justice process and for indigenous communities to assist in directing the punishment of offenders (Parkinson, 2001). A number of reasons have been advanced for the recognition of some customary law, specifically in the sentencing process. The most significant of those is to bring about safer and less violent communities, given anecdotal evidence that many "customary" communities employ what might be described as "restorative" models of justice and have very low levels of violence and criminality generally (Sarre, 1998). While there are good reasons for action in relation to the use of customary laws, such action does not appear to have materialized (Mugford, 1997). Several reasons have been suggested, including the possible threat that federal legislation might pose to state and territory governments and a concern that it might set a precedent for dealing with laws of immigrant communities within Australia (Mugford, 1997). Jamrozik (1994) suggests that customary laws have been used with the explicit support of the courts in a few exceptional cases. Nonetheless, some commentators believe that Aboriginal law should have a special place within the judicial system, unlike the cultures and laws of other minority groups (Jamrozik, 1994).

Conclusion

Policing the plight of indigenous Australians is a contemporary dilemma that has deep historical roots. From the colonisation of Australia, indigenous Australians have lacked social, economic, and political power, and their relationship with the predominantly white, Anglo-Saxon police has been based on terror, violence, and oppression (Broadhurst, 1997; Cunneen, 2001). The plight of indigenous Australians came to the forefront of Australian criminal justice issues during the 1980s, culminating in an extensive Royal Commission inquiry into the large number and frequency of Aboriginal deaths in custody.

Despite the comments and statements of the Royal Commissioners condemning the treatment of Aboriginal people at the hands of the police and other criminal justice officials, the inquiry did not find police and prison officers responsible for any of the 99 deaths. Consequently, many commentators suggest that the Royal Commission did very little to help Aboriginal people view police in a different way (Harris, 1996). The distrust and animosity is still evident. Chris Cunneen (2001) maintains that "terror and violence today remain an important part of the relationship between

the criminal justice system and Indigenous people in Australia" (Cunneen, 2001, p. 107).

> In the decade after the Royal Commission handed down its national report, indigenous people continue to die in custody predominantly from suicide and self-inflicted injuries (43 percent) and from natural causes (43 percent) (Williams, 2001). However, the number of indigenous deaths occurring in police custody from January 1, 1990, to December 31, 1999, decreased from 67 deaths (during the Royal Commission inquiry) to 21 deaths (Williams, 2001).[16] The decrease in Aboriginal deaths in police custody is an important development and may have been as a result of changes - imperfect that they clearly are - made to policing practices as described in the preceding section.

Although some progress has been made, many criticisms prevail on the processes undertaken by the various police departments in their efforts to reduce the power imbalance of indigenous people in Australia. Criticisms have been leveled at the degree to which the recommendations have been implemented and at the real value of the programs adopted (Brennan, 1994; Cunneen, 2001; Harding et al., 1996; McDonald and Cunneen, 1997). In particular, some commentators argue that there has been little attempt to negotiate with Aboriginal communities in relation to the design and delivery of programs and policies (Brennan, 1994). Governments and courts alike have thwarted the process of self-determination by strictly adhering to liberal legal traditions (Bottomley and Parker, 1999). In areas where Aboriginal community police have been recruited, they have been poorly trained and supervised (Cunneen, 2001). Further, McDonald and Cunneen (1997) claim there is little if any accountability or transparency in relation to police discretion, there are disparities between jurisdictions in relation to the criminalisation of public drunkenness and other public order offences, and that racist and violent police practices continue.

We conclude that, while redressing the plight of indigenous Australians goes well beyond the purview of the police, Australian police departments nonetheless need to revisit much of the Royal Commission recommendations. We observe that over the past 10 years, police agencies, in partnership with their respective state governments, have made a wide variety of attempts to reduce the plight of indigenous people within the criminal justice system. We note, however, that the state of policing in Australia continues to exacerbate the historical tensions between police and indigenous communities into the 21st century. The Royal Commission into Aboriginal Deaths in Custody did much to highlight the plight of indigenous people and to identify the poor relations between police and indigenous people. The Commission's recommendations have served as benchmarks by which Australian policing can contribute to reducing the social, economic, and political imbalances experienced by Aboriginal people. Nonetheless, the basic principles of community policing appear to have been short-changed in indigenous communities, training and recruitment has been inadequate, and the lack of participation of indigenous people

in diversionary programs has been disappointing. Until these deficits have been remedied, relations between the police and indigenous communities will continue to be difficult at best and oppressive at worst.

Notes

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[2] Ethnic ghettos or enclaves are defined as areas of multiple deprivation dominated by a single ethnic minority or by closely associated minorities (see Jupp et al., 1990).

[3] See Burnley (1990) for a detailed presentation and discussion of recent Australian census data and contrasting comparisons to London and areas in the United States.

[4] Most Australians readily identify the suburb of Cabramatta, located in Sydney's outer western suburbs, as an "ethnic ghetto" and as an area that poses challenges for the police. We remind readers, however, that this type of ethnic enclave that experiences a multitude of social and economic problems is not characteristic of Australian communities.

[5] The term "Aboriginal" refers to mainland and Tasmanian indigenous people in Australia. "Torres Strait Islander" people are defined as those peoples that descend from the 19 small islands that lie to the north of the northernmost point of mainland Australia (Cape York). The Torres Strait stretches approximately 150 km between the northern most tip of Australia and the south coast of Papua New Guinea and is the stretch of water that links the Coral Sea in the east with Arafura in the west. The term "indigenous people" is used generically in Australia to refer to both Aboriginal and Torres Strait Islander people. We note that the Royal Commission into Aboriginal Deaths in Custody considered only the deaths in custody of Aboriginal people.

[6] We acknowledge the various explanations for "overrepresentation," including that Aboriginal people commit a disproportionate amount of crime; that Aboriginal people commit a disproportionate amount of certain offenses that are more likely to be detected and processed by the criminal justice system (e.g., serious and visible offenses); or that the criminal justice system is guilty of unwarranted disparity in its treatment of Aboriginal people (see La Prairie, 1995: 162; see, also, La Prairie, 1997). For a detailed analysis of the overrepresentation issue in relation to Aboriginal people in Australia, see Broadhurst (1997).

[7] We note that the Northern Territory is not technically a "state" in Australia. However, in our paper, we use the term "state" occasionally in referring to the Northern Territory for ease of expression.

[8] According to Broadhurst (1997), the Australian states of Tasmania, Victoria, and New South Wales (NSW) have average or below-average Aboriginal populations, negligible proportions retaining traditional languages, little or no land under Aboriginal "control" or claim, and relatively low Aboriginal participation in imprisonment. South Australia has a below-average Aboriginal population, but higher language retention and significant areas under Aboriginal control, whereas Queensland has an above-average Aboriginal population but below-average language retention and only a small area of land under Aboriginal control. Both have levels of Aboriginal imprisonment that fall between the extremes. The above- and below-average references are compared with the national average.

[9] In 1835, the Governor, Sir Richard Bouke, proclaimed Australia as being terra nullius, reinforcing the notion that the land belonged to no one prior to the British Crown taking possession of it. Aboriginal people therefore could not sell or assign the land, nor could an individual person acquire it, other than through distribution by the Crown.

[10] In 1967, a referendum was held by the Commonwealth of Australia to amend s51 (xxvi) of the Constitution and repeal s127, giving the Commonwealth the power to make laws regarding Aboriginals and ordering that Aboriginals be counted in the census.

[11] The Royal Commission into Aboriginal Deaths in Custody is variously referred to in this paper as "the Royal Commission" and "the RCIADIC." We cite the final report as Johnston (1991), and we use the numbered paragraph system as it appears in the final report to identify direct quote passages in our paper.

[12] Self-inflicted deaths include self-inflicted injuries and hanging.

[13] We were unable to determine, from the data presented in the final report, the age of one man who died from a self-inflicted injury in police custody. His case file was not released for cultural reasons.

[14] We were unable to determine, from the data presented in the final report, the length of time the man referred to in the previous footnote had been detained in police custody. His case file was not released for cultural reasons.

[15] The recommendations made by the Royal Commission dealt with a variety of issues relating to Aboriginal people and police relations. For example, recommendations 60 and 61 focused on police violence and racism; recommendations 79 to 91 focused on diversion from police custody; recommendations 122 to 167 focused on custodial health and safety; and recommendations 214 to 233 focused on police training, the establishment of police protocols, and the recruitment of Aboriginal people in police service roles.

[16] We note that prison deaths, by contrast, increased from 39 to 93 (Williams, 2001). Overall, the total number of indigenous deaths in places of detention marginally increased by 5 deaths. Note that Williams (2001) considered 110 deaths in the period from January 1, 1980, to December 31, 1989; therefore, he included 11 extra deaths in the same period as the Royal Commission inquiry.

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