

Breaking the Silence that Silences: A time of challenge and change in Aboriginal/police relations, the 1960s and 1970s*

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They used to get us down there, you know, and always hassle us, but we just took it, there was nothing we could do about it.

Aboriginal man from Cowra, speaking of the early 1960s¹

Introduction

This article examines the process of Aboriginal/police relations coming under intense public scrutiny through the 1960s and 1970s in New South Wales. For the first time since the formation of the police forces in this state, the long-standing discriminatory police treatment of Aborigines was forced into mainstream public discourse as problematic and in need of reform. Police discrimination and harassment of Aborigines in the 1960s was not new; historically police and Aboriginal relations have been notoriously bad. However the scrutiny of these practices and the subsequent challenge to police legitimacy was an important new development in the character of these relations. Previously there had been little sustained public criticism of police treatment of Aboriginal people. For the police, the legitimacy of their practices was secured by their positive image as neutral enforcers of general laws.

From the early 1960s Aboriginal and civil libertarian critiques of policing gained momentum within Aboriginal political groups. From the late 1960s and early 1970s politicians, liberal lawyers, the media and academics “discovered” the discriminatory policing of Aborigines. The problems in Aboriginal/police relations gained formal political articulation by these predominantly white individuals and institutions. Government inquiries and academic studies were called for and carried out.

The genesis of public scrutiny at this time constituted an important challenge to the legitimacy of police practices towards Aborigines. Over the past two decades this challenge has advanced, to the extent that it has been institutionalised in the Aboriginal Legal Services and other community and government agencies.

However, the emergence of this challenge has been largely ignored within the writing of history and criminology. Although there has been much scholarly study of contempo-

* Thanks to Stephen Garton who supervised the history honours thesis on which this article is based. Thanks also to Chris Cunneen and many friends for their assistance.

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1 Tobin, P, “Fringe Dwelling Rural Aborigines and the Law in New South Wales” (1970) 8(3) *Smoke Signals* 47.

rary Aboriginal/police relations, there has been surprisingly little of the history of Aboriginal/police relations.

Since the early 1970s substantial scholarly attention to Aboriginal/ police relations has been primarily concerned with demonstrating and analysing the repressive and racist nature of policing of Aborigines, as well as indicating how this has stifled Aboriginal self-determination. These approaches problematised police practices and the white culture which supported them. Historical studies have applied this approach when looking at police quashing Aboriginal resistance on the frontier, and the implementation of repressive government administrative regimes of protection and assimilation.²

Another dominant strand has drawn upon the rich interpretive tradition of social reaction theory.³ Studies in this area have attempted to demonstrate how the extraordinary policing of Aborigines, particularly at times of social crisis, has been pushed for, justified and normalised by the non-Aboriginal community, through fears of a breakdown in law and order. Questions of the legitimacy of police action within the white community have been central to this approach. Yet, within such studies, legitimacy has been primarily discussed in terms of continuing state repression of Aborigines enabled through police maintaining their legitimacy in the wider community. Formal political challenges to police legitimacy are a minor component of this approach, with the focus remaining on the logic of increasing police action.

Other approaches, mainly deriving from anthropology, have illuminated Aboriginal resistance to policing, in turn interpreting such resistance as coming out of the values within Aboriginal culture. Some work has interpreted this as active political resistance. Another strand sees this situation an oppositional culture — that is, inherently different and opposed to the value system of the white culture, rather than actively resisting it. Both of these strands have illuminated many forms of minority resistance, though formal political challenge has only been a marginal focus. These studies have shown the importance of the basic point: that continued (and increasing) policing is necessary because Aboriginal people refuse to accept the values of the white community, which the police are enforcing.

This body of study mentioned above has been fruitful in illuminating and problematising the extent of police repression, and the legitimacy it has received from the white community. Furthermore these studies have shown, very forcefully, that high levels of arrest, incarceration and discriminatory policing, are not a natural or inevitable result of policing Aboriginal people.

This article takes these approaches as its starting point. In addition, it attempts to take one step back, and address the issue of how the public scrutiny of Aboriginal/ police relations, of which such studies are a part, developed in the 1960s and 1970s. Given the context of contemporary concern with Aboriginal/police relations, as evidenced by the recent Royal Commission into Aboriginal Deaths in Custody, it has become important to look at the development of police actions and operational policy with respect to Aborigines. Fur-

2 Loos, N, *Invasion and Resistance: Aboriginal-European Relations on the North Queensland Frontier, 1861–1897* (1982), Elder, B, *Blood on the Wattle: Massacres and Mistreatment of Aborigines since 1788*, (1988) and Read, P, *Stolen Generations: The Removal of Aboriginal Children in New South Wales 1883–1969* (1982) NSW Ministry of Aboriginal Affairs, occasional papers no 1.

3 Hall, S, Crichton, C, Jefferson, T, Clarke, J and Roberts, B, *Policing the Crisis: Mugging, the State and Law and Order* (1978).

thermore, over the past two decades public scrutiny of policing has proved to be a sustained challenge to Aboriginal/police relations. Therefore it is important to gain a sense of this history, its evolution and development.

In understanding the emergence and growth of public scrutiny of policing, a number of questions become important. How did this alternative discourse develop? Who developed and articulated it? What was important about the context of the late 1960s and early 1970s that pushed the issue of Aboriginal/police relations into public debate? In addressing these questions this article will map first the nature of police practices towards Aborigines in the 1960s. Second, it will trace the development of these practices within the growing and changing Aboriginal political movement. Given the lack of such study on the early 1960s, particular attention will be paid to developments in this period. Third, it will chart the increasing recognition of Aboriginal criticisms of policing within (white) public discourse across these two decades.

The character of Aboriginal/police relations in the 1960s

It has often been remarked that the police were the whites with whom Aborigines in country towns had the most contact, and not by the choice of Aborigines.⁴ From the known rates of arrests and recorded experiences of Aborigines it is evident that in the 1960s policing was a serious problem for Aborigines and Aboriginal communities. Throughout the decade the Aboriginal/police relations were characterised by a high degree of police supervision and scrutiny of Aboriginal life and lifestyles. Aboriginal/police relations in the 1960s were continuous with earlier police involvement in Aboriginal life. Since the turn of the century the police had been on the cutting edge of controlling and suppressing Aborigines with strong legal powers, which were often overstepped.

In the 1960s the police had a dual role in relation to Aborigines. They had responsibility over Aborigines as members of the general public, as well as wielding extensive powers as agents of the Aboriginal Welfare Board. Under amendments in 1963 to the *Aborigines Welfare Act* (1943) the local police in country areas were given responsibility for supervising and attending to the health and welfare of Aborigines on "reserves". In addition the police had the right to enter any house on a reserve, control access and expel Aborigines from the reserves.

The intrusive supervisory role facilitated police intervention into Aboriginal life. That is, this position then aided the police in their role as agents of the criminal justice system. Arrest statistics are one means of analysing patterns of police work towards Aborigines. However, the information from police sources is patchy and obscure, rendering the task difficult. The police department did not collate arrest and charge rates specifying the race/ethnicity of offenders, making it impossible to gain Aboriginal arrest rates from these collated statistics. The lack of official sources is one reason why this area of police work has remained a hidden history; alternative sources have to be sought to construct a picture of the policing of Aborigines. A number of studies carried out at the time and more recently can be used to provide such insights.

4 Beckett, J, "The Land Where the Crow Flies Backward" (1965) 9(4) *Quadrant* 47.

The north-western New South Wales town of Brewarrina in 1964 provides a pertinent case study. Policing was almost totally directed at Aboriginal people. Of all charges laid 96.6 per cent were against Aboriginal people and they comprised 97.4 per cent of all arrests commissioned. Aborigines though, made up only 30–40 per cent of the population of the area.⁵

Another study, conducted in 1965, obtained statistics for districts known to have comparatively large Aboriginal populations. For these areas 67.5 per cent of all charges were laid against Aborigines.⁶ It can be estimated that Aborigines would have only made up 40 per cent of the population in some towns, and in most towns significantly less.⁷ Even with this constraint of not knowing the exact Aboriginal population taken into account, these figures still suggest a significant over-representation of Aborigines in charge statistics.

Arrest rates from other areas builds up further the very clear pattern of over-representation. In Dareton (in south-west New South Wales) in 1963 there were 140 Aboriginal people in the community, yet 170 charges were laid against Aborigines that year, mainly for drunkenness.⁸ In 1964 in the police district of Engonia (north-west New South Wales) Aborigines made up only 25 per cent of the population, yet they accounted for 85 per cent of the total 300 arrests for the year.⁹ Similarly in Walgett in 1969 another study found that of the 1400 arrests made in the year, 70 per cent were laid against Aborigines; who constituted only about 40 per cent of the district's population.¹⁰

Not only were Aborigines arrested at a significantly higher rate than non-Aborigines, they were arrested for a very limited range of offences, almost exclusively of public order offences. For instance, in Brewarrina in 1964 offences against good order, predominantly drunkenness, accounted for 96 per cent of the total charges laid against Aborigines.¹¹ In the 1965 study "drunk and disorderly etc" accounted for 67.9 per cent of arrests and charges of Aborigines.¹² It is clear that Aborigines were policed for public order offences at a significantly higher rate than the general New South Wales population; in 1964 offences against good order accounted for only 28 per cent of total offences in New South Wales.¹³

These statistics delineate the inordinate level of police involvement, as agents of the criminal justice system, with Aboriginal communities. But how should this be interpreted?

5 Cunneen, C and Robb, T, *Criminal Justice in North-West New South Wales* (1987) NSW Bureau of Crime Statistics and Research at 199.

6 Rowley, C D, *Outcasts in White Australia* (1973) at 357. The statistics covered the first six months of 1965, covering the NSW towns of Condoblin, Kempsey, Moree, Nowra, Walgett and Wilcannia.

7 See, eg, Tobin, above n1 and Cunneen and Robb, above n6.

8 Rowley, above n7 at 161.

9 Id at 294.

10 Tobin, above n1 at 44.

11 Cunneen and Robb, above n6 at 200. The offences included in this group are: drunkenness, offences of offensive manner/unseemly words, etc, vagrancy and assault/hinder police.

12 It is unclear what is included in the category "drunk and disorderly etc" and it may extend to other public order offences; see Rowley, above n7 at 357.

13 Mukherjee, S, Scandia, A, Dagger, D and Mathews, W, *Source Book of Australian Criminal and Social Statistics 1900–1980* (1981) Australian Institute of Criminology, Canberra Table C1 Total Offences (Magistrates Court) at 45 and Table C5 Offences Against Good Order (Magistrates Court) at 49. Offences included in the category "offences against good order" were: drunkenness, drunk and disorderly, indecent/riotous/offensive behaviour, vagrancy, offensive/threatening/abusive language, evade fare public vehicle, public mischief, escape from custody, conduct scandalous or lewd, and hinder/resist arrest.

It could be argued, as Charles Rowley argued at the time, that these figures suggest that at this period Aboriginal culture was in crisis, in particular with drinking problems, and thus Aborigines committed more offences than whites.¹⁴ However, once evidence of Aboriginal experience with policing is taken into account, it appears clear that Aborigines were targeted for particular police attention on the basis of their race — attention which has been termed “over-policing”. Aborigines were subjected to greater police attention than non-Aborigines; it then followed that they were arrested at a greater rate. Aboriginal experience of policing can only be understood by turning to non-official sources such as oral history, Aboriginal autobiography and contemporary ethnography.

Within this picture of over-policing it is significant that Aborigines were arrested predominantly for public order offences. These offences generally relied on the discretion of the police officer in determining when public order had been breached: it was proactive policing. The police did not require a citizen report or complaint and there was generally no victim, nor did the charge require any detective work. Police constantly made these discretionary decisions and in these decisions gave far greater attention to Aborigines than to whites. Claims of discretionary arrest were central in the Aboriginal experience of policing.

Over-policing was particularly noticeable and invasive on Aboriginal reserves. A common police practice was continual “cruising” around reserves and fringe camps.¹⁵ Aborigines in urban and rural areas, often reported police bursting into their houses at night supposedly searching for drunks. Aborigines were also targeted for special attention by the police in public places, often ending with charges for public order offences. While these practices may have been legal, they constituted a form of harassment and created an atmosphere of tension in these areas. The constant harassment by the police led, understandably, to feelings of hatred for the police within Aboriginal communities.

It is ironic that such policing practices were occurring at a time when there was an official policy of “assimilation”, when Aborigines were supposedly being assisted by government authorities to become equal members of the community. The actions of the police reinforced the racial divisions and marked the lack of acceptance of Aborigines by the white community.

A significant silence: the position of Aboriginal/police relations within the police administration and wider public debate

Surprisingly, despite the level of involvement in Aboriginal communities, police relations with Aborigines was not an issue of great concern for police administration, the government or the wider public debate. There was no space within prevailing official discourses on police and policing for consideration of an “Aboriginal policing problem”. There was very limited criticism, debate or discussion on police practices with Aborigines. In fact there was a significant silence on this issue. The silence itself is revealing; it perhaps suggests the dimensions of the racism of the time that this was thought not to be an issue, or that perhaps the issue was so distasteful that it was not raised.

14 Rowley, above n7 at 352.

15 Beckett, above n5 at 41.

This silence was apparent in *The Australian Police Journal*, the *NSW Police News* and the Police Department Annual Reports, the major official police publications. There was an incredibly limited desire to offer instructive, provocative or critical material in these official journals on policing Aborigines. Throughout the decade there were only a few pieces on Aborigines.¹⁶ This suggests that the policing Aborigines did not fit within the public image that the police wanted to present; that public image was based around images of police solving crimes, protecting the community from deviants and carrying out community service.

The study *Police and the Public* by Duncan Chappell and Paul Wilson provides an index of mainstream academic discourse on police and policing in the mid 1960s. In an investigation of "areas of conflict" with the police, members of the public and police forces were asked to identify particular sections of the community which were "resentful" of the police. Respondents were provided a list to select their answers from; Aborigines were not one of the groups on the list.¹⁷ This indicates that the researchers did not recognise Aborigines as a population which may be resentful. There was, however, a brief mention of Aborigines in the discussion of the results of the survey of police: "14 per cent of Queensland police thought that aborigines [sic] were against them ... this is probably a reflection of the opinions of the population as a whole towards aborigines ... rather than something peculiar to the police force involved."¹⁸ Thus, where Aborigines came under the researchers, gaze the assumption was that there was no specific problem as a product of the relationship between Aborigines and police.

The limited concern with Aboriginal/police relations is confirmed by a reading of other sites of public discourse. In state parliament, the New South Wales parliamentary inquiry on Aboriginal welfare and the Federal/State conference on Aborigines, there were only rare discussions of Aborigines and police.¹⁹ The lack of concern was also evident in the media. In *The Sydney Morning Herald*, policing of Aborigines hardly rated as an issue, with no more than a handful of articles on the issue.²⁰

This silence reveals that the policing of Aborigines was constructed as legitimate and appropriate within these discourses, as shown through its absence as an issue for criticism or debate. The police practices towards Aborigines remained submerged at the official level of police administration and wider public debate.

16 *Aust Police J* (1960–79), *New South Wales Police News* (1966–72), New South Wales Police Department, *Annual Report* (1960–70). One exception was the article Wurm, S, "Aboriginal Language and the Law" (1964) 4(18) *Aust Police J* 289, which dealt with issues of translation and understanding of court procedures for Aborigines in courts in Western Australia.

17 Chappell, D and Wilson, P, *The Police and the Public in Australia and New Zealand* (1969), Table 21 at 101.

18 *Id* at 136.

19 *New South Wales Parliamentary Debates*, vol 32 196– vol 90 1970; Parliament of New South Wales, *Report of the Joint Committee of the Legislative Council and Legislative Assembly upon Aboriginal Welfare* (1967); *Aboriginal Welfare: Conference of Commonwealth and State Ministers, Proceedings and Discussions* (July 1963) Darwin.

20 "Fear in the Streets" *Sun-Herald* 10 December 1961, "Aboriginal Boys Spend Nights In Police Cell", *The Sydney Morning Herald (SMH)* 30 June 1964, "Aborigines Petition Against Police" *SMH* 20 June 1966 at 1 and "Allegations of Police Brutality" *SMH* 25 March 1967.

The 1960s — critiques of policing emerge

On the afternoon of 4 June 1963 Ken Brindle, an Aboriginal man from Redfern, went to the Newtown police station to follow up on an incident which had occurred the previous evening. The police had disturbed three Aboriginal youths during an alleged attempted robbery of a railway station kiosk, and the youths had not been seen since. At the Newtown police station Brindle was told by a Detective Constable Armour that one of the Aboriginal youths had died that afternoon from police gunshot wounds to the back of his head.²¹ Brindle recalled that the following exchange then took place:

Brindle: It sounds like pretty drastic action.

Armour: Look, don't think you can come here and paint these abos lily white, because I know all the abos around this area. They are a pack of no-hopers.

Brindle: I didn't come here for your apparently biased opinion of aborigines, I came here for information.

Armour: Oh, a cheeky black bastard.²²

Armour then punched Brindle in the jaw and dragged him off to the charge room where he was charged with using insulting words.

At Brindle's hearing a number of months later, the recently formed Council for Civil Liberties (CCL) retained counsel on Brindle's behalf. To add weight to the prosecution case six police witnesses all claimed that Brindle had been drunk when he arrived at the station. However, the police chose an unlikely person to call a drunk. In court Brindle's barrister presented evidence that Brindle hardly ever had a drink and further was not drunk that day.²³ In considering his verdict the magistrate said, "[a]s I see the matter on the evidence ... there has been deliberate lying by one side or the other."²⁴ In acquitting Brindle the magistrate must have thought the deliberate lying was by the police. However, Brindle did not allow the matter to stop with an acquittal. With the CCL he successfully acted to claim damages for assault and malicious prosecution, and was awarded £400 damages.²⁵

The victory in the Brindle case was a first. It was a small event which marked a shift in Aboriginal/police relations. Police harassment and intimidation of the Aboriginal community in inner-Sydney was endemic in the early 1960s and previously the courts offered little hope for redress. According to Jack Horner, the Honorary Secretary of the Aboriginal Australian Fellowship (AAF), for an Aboriginal person to win a case against the police in 1963 was "unheard of" and to convict a policeman was "equally unheard of".²⁶ Faith Bandler, also active in the AAF, claimed that the Brindle case was "a turning point in relationships between the police and urban Aborigines. After being consistent losers for

21 Buckley, K, *Offensive and Obscene: A Civil Liberties Case Book* (1970) at 20–1, Harding, R W, *Police Killings in Australia* (1970) at 116–7.

22 Buckley, id at 21, from Brindle's statement to court; see also Bandler, F and Fox, L (eds), *The Time was Ripe: A History of the Aboriginal-Australian Fellowship (1956–69)* (1983) at 88–7 (an interview with Brindle in 1981 about the case).

23 Buckley, id at 23–35; Harding, above n22 at 116–7.

24 Buckley, id at 35.

25 The jury found for Brindle on malicious prosecution, awarding damages for this charge. The jury found that Armour and colleagues had deliberately and maliciously lied in an effort to convict Brindle. However, and contradictorily, they found for Armour on the allegation of assault. See Harding, above n22 at 115.

26 Private correspondence from Jack Horner, 24 August 1992.

more than a hundred years, the Aboriginals had at last had a win.”²⁷ Aborigines and their supporters proved that they could challenge the police, using the courts to subject them to public scrutiny.

The challenge posed by this case was not an isolated occurrence. It was emblematic of the growing concern with challenging the legitimacy of policing practices towards Aborigines. From the early 1960s Aboriginal and civil libertarian critiques of policing slowly emerged. This section traces the emergence and development of this critique through the 1960s.

Many groups and individuals were brought into alliance over these challenges in the 1960s. Aborigines from Redfern were active in responding to the problems that policing presented for their community.²⁸ The Redfern community gained support from the AAF, an Aboriginal rights organisation. The AAF, founded in Sydney in 1956, was a predominantly non-Aboriginal organisation in its early stages. It saw itself as promoting political change for Aborigines, in contrast to other organisations which provided charity or welfare. After initial distrust and suspicion from the Redfern Aboriginal community, some Aborigines from Redfern became involved. They became significant figures in the AAF and directed the organisation towards the pressing problems facing urban communities, especially housing and police harassment.²⁹

The Council for Civil Liberties became involved with Aboriginal/police relations through its role as “a watch-dog concerned with the preservation and extension of civil liberties”.³⁰ The abuse of power by police was one of its principle concerns. It was established by white academics and lawyers in 1963. It developed a close relationship with AAF through working on a number of cases, in particular the Brindle case. The involvement of the CCL in the Brindle case laid the foundations for an alliance between white urban lawyers and Aboriginal activists which was crucial in placing policing under public scrutiny.

Why was it in the early 1960s that this challenge to policing emerged and gained momentum? Policing had been a major problem for Aborigines for many decades, yet it was only in the 1960s that these concerns were articulated and acted upon in such a public way. Aboriginal critiques of policing emerged in the early 1960s, as one issue among many, within the context of growing Aboriginal activism. In this period a number of Aboriginal organisations, including the AAF, the Aboriginal Foundation and the Federal Council for Aboriginals and Torres Strait Islanders (FCAATSI), were formed and expanded. Aboriginal activism, though, was not new — in the previous decades there had been periods of Aboriginal activism. Yet the 1960s were different. In the 1960s the political and cultural context of decolonisation provided an effective critical language for Aborigines to describe and act on their relations with whites. This helped the movement for Aboriginal rights to gain an unprecedented political rational, force and public significance.

Decolonisation made race relations a critical issue and put race discrimination at the centre of political struggles. Internationally, decolonisation had been gaining force since the end of World War II, with many forms of colonial relations being struggled against. The 1960s witnessed such movements as the anti-Apartheid movement in South Africa,

27 Bandler and Fox, above n23 at 81.

28 Horner, J, “The Two Fellowships: The AAF and the Christian Church” in Bandler and Fox, id at 172.

29 Brindle, K, “I was a Bit Cynical” in Bandler and Fox, id at 17–9.

30 Buckley, above n22 at 9.

the civil rights movement in the USA and many national groups acting successfully for independence from colonial powers.

The wider context of decolonisation was complemented by local material changes for Aborigines in New South Wales. The 1960s were a period of increased Aboriginal mobility and independence as the formal state powers over Aborigines were broken down and great numbers of Aborigines escaped from the control of reserves, and migrated to towns and cities. The 1960s also witnessed a growth in white support of Aboriginal affairs, in part because Australia was becoming a more liberal society and also from a recognition of the colonial treatment of Aborigines.

As the critiques of policing emerged, Aborigines and their supporters challenged policing practices in a range of cases and incidents. In 1961 the AAF complained to the Police Commissioner about a police "sweep" of Redfern one afternoon where approximately 30 Aborigines were arrested for public order offences. The Aborigines claimed they were doing no more than walking along the street.³¹ The Commissioner was also approached in 1961 about unwarranted violence by police officers outside the dances which the AAF and Redfern All Black Football club held in Redfern.³² Late in 1961 Aborigines from Redfern articulated their concerns through the media; "Fear in the Streets: Protest by Aborigines" read the headline in the *Sun-Herald*. The article continued, "[m]any aborigines [sic] at Redfern were too frightened to walk the streets because of police victimisation, native community leaders claimed this week."³³ In May 1963, Ken Brindle and others met with Inspector Fraser from the Redfern police station. At this meeting they presented a log of documented complaints of harassment and false arrest of Aborigines by the police at Redfern.³⁴

With the support of metropolitan organisations, Aboriginal groups in country towns also challenged and scrutinised policing practices. In 1964 the Griffith Aboriginal Assimilation Organisation (AAO) approached the CCL and AAF to send a barrister to appear at an appeal, for what they believed was an unfair fine of £1.10 against an Aborigine for being drunk on a reserve. However, after some time, the Griffith AAO decided not to proceed with the appeal on the grounds that the fine was small and a lesson had been taught.³⁵ Eddie Linacre from the Griffith AAO declared in a letter to the AAF that "the police barge about the reserve less majestically since it appeared that Aborigines are liable to be legally defended in the future ... the exercise has been well worthwhile."³⁶

Again in 1966 the Griffith AAO called upon the metropolitan organisations for support, this time for the inquest into the death in police custody of an Aboriginal man, Harold Hampton. Jack Horner assisted in preparing evidence and observed the inquest for the AAF, FCAATSI and the CCL.

Importantly, besides responding to individual incidents, a wider pattern of discriminatory policing was recognised and articulated within Aboriginal politics. This was evident

31 Gentle, C L, Secretary Police Department to Hon Secretary, AAF, 20 February 1962 and "comments" attached to the letter, Redfern file, AAF Mitchell Library, Manuscript [ML MSS] Box 6.

32 Jack Horner to the Police Commissioner, 10 July 1961, Redfern file, AAF ML MSS Box 6.

33 "Fear in the Streets: Protest by Aborigines", *Sun-Herald* 10 December 1961.

34 *Yindilli* (FCAATSI newsletter) (1964) at 10, FCAATSI ML MSS Box Y600; "Statements by Aborigines Arrested in Redfern", no date (probably mid 1962) at 7, Redfern file, AAF ML MSS Box 6.

35 Council for Civil Liberties, *Newsletter no 3* at 6 Law Reform file, AAF ML MSS, Box 6.

36 Linacre, E, Griffith AAO to Jack Horner, Hon Secretary AAF, 26 June 1964, Griffith file, AAF ML MSS Box 6.

in the fact that the issue was continually raised at the AAF and FCAATSI conferences throughout the decade.³⁷ At the 1965 AAF conference, one of the first calls for a wide ranging inquiry was made; the resolution sought an “official inquiry into the allegations of brutality and discrimination of police officers against Aborigines in country areas”.³⁸ Such a call for a wide ranging inquiry indicates that there was a recognition that policing was a generalised form of discrimination affecting Aborigines across the state.

Within this climate of concern what space did the issue of policing occupy? What political meaning was attached to it? Faith Bandler recalls that even with this response by Aboriginal groups there was a wall of silence on police, that it was one issue which was very difficult to be active on.³⁹ In the 1960s there were only a few organisations and individuals interested in taking on the issue of policing; even within the AAF and FCAATSI it was not considered a major priority.

Two reasons can be offered for the limited interest in policing in this period. First, the police as an institution were well respected by the general public, making criticism of them difficult.⁴⁰ This climate of support allowed the police to be rarely investigated by other public authorities and to remain relatively immune from criticism, including in the media. Such a climate bred a degree of uncertainty and distaste about criticising the police, including, of course, any criticisms about its practices towards Aborigines.

Second, the importance given to the issue of policing was circumscribed by the ideas which structured Aboriginal politics. Aboriginal politics pre-1967 operated within a discourse of “equal rights and equal opportunity”. Within this context Aboriginal/police relations was understood as a problem of civil rights.⁴¹ The politics was founded on the assumption that the primary aim was the gaining of full civil rights, which was to occur through the repealing of discriminatory legislation and the extension of full citizenship rights by the state. It was this set of political ideas which supported the successful campaign for a referendum to amend the constitution to give Aborigines full citizenship rights. The belief was that other reforms would follow on the heels of these changes, discrimination would cease and they would be treated by whites as equal citizens in all spheres.

37 See for instance, “Aborigines and Ourselves, papers and discussion of the conference held by the AAF 13–15 October, 1961” at 23, Conference 1961 file, AAF ML MSS Box 4; “Federal Council for Aboriginal Advancement, Reports and Proceedings for the 5th Annual Conference on Aboriginal Affairs, March 1962” at 11, 1962 Conference file, FCAATSI ML MSS Box Y603, “FCAATSI, Reports and Proceedings of the 11th Annual Conference on Aboriginal Affairs, 12–14 April, 1968” at 10, 1968 Conference file, FCAATSI ML MSS Box Y603.

38 “Special Aborigines Conference, Resolutions, October 16–17, 1965”, Conference 1965 file, AAF ML MSS Box 4.

39 Interview with Faith Bandler, 16 June 1992.

40 Chappell, D and Wilson, P, *The Police and the Public in Australia and New Zealand* (1969) at 37; Morgan Gallup Poll in Swanton, B, Harrigan and Psaila, G (eds), *Police Source Book 2* (1985) Australian Institute of Criminology, Table 8.3 at 164.

41 See, for instance, “Aborigines and Ourselves, papers of AAF 1961 conference”, above n38 at 23, policing discussed in the “Civil Rights” section of the conference. it was also discussed under civil rights at the 1968 FCAATSI conference, “FCAATSI, Reports and Proceedings of the 11th Annual Conference on Aboriginal Affairs Conference, 12–14 April, 1968” above n37 at 10.

The 1970s — shifts within Aboriginal politics

In the late 1960s and early 1970s there was a significant intensification of focus on policing within Aboriginal politics; in fact, the issue erupted as one of the major issues of the political movement. The critiques and interventions of this period built upon the activities of the previous decade. However, critiques were articulated with greater force and clarity, new perspectives were applied to viewing Aboriginal/police relations and it gained greater momentum within Aboriginal politics. From this the issue burst into (wider) public debate, greatly increasing the public scrutiny of policing practices.

The increased awareness and scrutiny of policing practices was demonstrated by a study of Walgett undertaken in 1969.⁴² This study, and the reforms it proposed, signalled that new questions were being asked of Aboriginal experiences of policing. The researchers were part of a tradition of study tours of Aboriginal communities in rural New South Wales by metropolitan based civil rights activists such as trade unionists and students. The focus of such tours was generally the living conditions and treatment of Aborigines.

Yet the particular focus of the 1969 group was unique and insightful; they undertook a detailed field study of "the law as it works in practice" in Walgett.⁴³ They conducted interviews with Aborigines and the white authorities who administered the legal system. They found, and detailed, systematic discrimination against Aborigines at every level of the criminal system, from policing to legal representation, the operation of the courts and imprisonment. Such discrimination had been noted previously, but the level of detail, analysis and proposals for reform marked a distinctive articulation of policing and heightened interest in the area.

The new agenda of intervention and reform was signalled clearly by the establishment of the Aboriginal Legal Service (ALS). The formation of the ALS in Redfern in early 1970 marked the institutionalisation of the Aboriginal challenge to policing, and was an initiative which surpassed any previous intervention. Its formation demonstrated the greater awareness and scrutiny of discriminatory policing, and the higher degree of resources and organisation that Aborigines could mobilise in response to this issue. The impetus for its foundation came from a group of young Aborigines reacting to the day-to-day pressures they felt operating in their own lives and the lives of other Aborigines.⁴⁴ The immediate catalyst for its formation was discriminatory policing in Redfern. In the late 1960s and early 1970s Aborigines claimed that they were regularly arrested without cause and subject to a police-imposed curfew. Most of the ALS's work involved cases of such discriminatory policing which ended in public order charges being laid.⁴⁵

The ALS operated as a unique form of legal practice. It operated as a community service organisation, designed to place effective and appropriate services at the disposal of

42 Tobin, above n1.

43 Ibid.

44 Wootten, H, "The Aboriginal Legal Service, Report to the Annual General Meeting, 30 August, 1971", at 1, Law Reform folder, FCAATSI papers, ML MSS, Box Y601 and Wootten, H, "Aboriginal Legal Services" in Nettheim, G (ed), *Aborigines Human Rights and the Law* (1974) at 59–80.

45 Lyons, G, "Aboriginal Legal Services" in Hanks, P and Keon-Cohen, B (eds), *Aborigines and the Law: Essays in Memory of Elizabeth Eggleston* (1984) at 138; Gilbert, K, *Because a White Man'll Never Do It* (1973) at 41–5 and Wootten (1974), id at 60.

Aborigines. It was also a unique organisational structure in that white lawyers worked under direct Aboriginal control. This relationship continued the alliance, established in the early 1960s, between urban Aborigines and white lawyers which was crucial in scrutinising policing practices. Aboriginal Legal Services were also established in other regions of New South Wales and throughout Australia. The ALS had a wider agenda than representing individual cases. It continually attempted to increase the recognition of the problem of policing within public debate, through publicising the issue and calling for reforms.

What was the context at the time which enabled such an intensification of awareness and action to erupt? The underlying factor was, of course, the continuing discriminatory policing of Aboriginal communities. With the lack of comparative statistics it is impossible to tell if policing was a greater problem for Aborigines in the late 1960s and 1970s than in the early 1960s. However, it can be recognised that there were a number of factors which may have contributed to increased policing. With the demise of the Aboriginal Welfare Board in 1969, which had contained and controlled Aborigines for decades, whites more frequently called upon police to fill this role. Conflict increased with continuing migration of Aborigines to large towns and cities and the increased prominence of Aborigines as segregation continued to be challenged. Police harassment may have also increased with clashes with police as Aborigines were more assertive in making their demands in political protests; the most dramatic example of this was the police break-up of the Tent Embassy in 1972. Thus it may be speculated that discriminatory policing increased across this period. However, in terms of the issue of the growing challenge to policing, what was more important was the shift in the Aboriginal political movement and the way that the issue of policing was viewed within this movement.

The 1970s were a time of heightened Aboriginal political activity. The Aboriginal political movement was stronger and more assertive than in the previous decade. Within the context of a forceful political movement, with radical ideas of racial difference and self-determination, there was a new and more forceful articulation of the problem of policing. The movement operated within a discourse of racial oppression; black-white relations were seen as an endemic conflict and as a domination of Aborigines by whites, as individuals and institutions. The development of a more radical Aboriginal movement was an Australian manifestation of a shift in indigenous and minority movements around the world, a shift from ideas of civil rights to a more radical political ideology of "black power" and "black liberation".

In Australia, within this context, a new conception of policing emerged which named the police practices towards Aborigines as a form of institutional racism. The police were seen as a racist institution enforcing white law which bore oppressively on Aborigines, not protecting them or according them rights.⁴⁶ Previously, discriminatory policing had been seen as an aberration, a departure from otherwise rational practice, which perhaps could be solved by the granting of "equal rights". Naming policing as institutional racism placed it within new and creative frameworks. Within such frameworks there could be greater political engagement and meaning attached to the issue. With this shift the challenge to

46 For early expressions of policing as institutional racism see Coe, P in Tatz, C (ed), *Black Viewpoints: The Aboriginal Experience* (1973) at 109-10, McGuiness, S. "Black Power in Australia" and Horner, J, "Brutality and the Aboriginal People" in Stevens, F S (ed), *Racism: The Australian Experience, A Study of Race Prejudice in Australia*, vol 2, (1973).

police practices was able to be linked to a wider — world-wide — political struggle by indigenous people for self-determination against oppression and racism. It could be linked to the historical oppression of Aboriginal people which had occurred since 1788. Police discrimination was used as a potent contemporary metaphor of the state oppression which Aborigines had survived since 1788.⁴⁷ Within this context the issue of policing erupted as an issue of major political importance in Aboriginal politics and subsequently wider public debate.

Aboriginal/police relations erupts as an issue in public discourse

From the early 1970s, academics, politicians and journalists “discovered” the Aboriginal/police problem and the police were placed under greater public scrutiny. In the early 1970s, Aboriginal/police relations slowly developed as an issue within white academic discourse, particularly within criminology. Such academic interest was important because it developed new patterns of discourse, expanding the critiques of Aboriginal/police relations. Furthermore it assisted in pushing the issue into mainstream political discourse. The academic discourse grew as one branch of the nascent of interest in Aborigines in the criminal justice system, which in turn was part of an emerging academic engagement with the workings of the criminal justice system. Elizabeth Eggleston is regarded as the pioneer of study in this area.⁴⁸ One of the earliest, and very public, displays of academic interest was the 1973 conference *Aborigines, Human Rights and the Law*. At this conference, attended by politicians, government officials, academics and Aboriginal community leaders, space was intentionally made for the articulation of Aboriginal experiences of criminal law and policing.⁴⁹ Slowly mainstream criminology recognised its previous “glaring omission” of interest in this area.⁵⁰

With recognition from academics, Aboriginal concerns about policing gained greater recognition from the broader white community. The 1970s were a time of a significant change in Australian society towards greater support of Aboriginal demands, along with the demands of other minority and special interest groups. The policy of assimilation — that Aborigines should become just like whites — was no longer the official policy, and the ideas of “self-determination” were beginning to inform official Aboriginal policy. This was a shift not only in official policy but also in social attitudes, whereby there was increased acceptance by whites of Aboriginal demands, including claims of discriminatory policing. The Whitlam government represented and made manifest this change in attitudes, with actions such as initiating a process to recognise Aboriginal land rights and greatly increasing support for Aboriginal services. One instance of such recognition was

47 For the ideas of the Aboriginal political movement of the early 1970s see generally, Gilbert, above n46, McGuiness, *ibid*, and Turner, A (ed), *Black Power in Australia, Neville Bonner versus Bobbi Sykes* (1976).

48 Eggleston, E, *Fear, Favour or Affection: Aborigines and the Criminal Law in Victoria, South Australia and Western Australia* (1976) (this book was based on her PhD which she began in 1965 and completed in 1970); Waller, L, “Elizabeth Eggleston, Aborigines and the Law”, in Hanks and Keon-Cohen, above n46 at 304–10.

49 Netheim, above n45, preface and at 54–9.

50 Chappell, D and Wilson, P (eds), *The Australian Criminal Justice System* (2nd edn, 1977), preface and at vii and Cohen, F, Chappell, D and Wilson, P, “Aboriginal and American Indian Relations with Police: A Study of the Australian and North American Experiences” in Chappell, D and Wilson, P, *Aust CJS* (1977) at 115.

extending support to the ALS; in 1973 the Whitlam government granted the ALS funding to provide free legal aid to all Aborigines in courts throughout New South Wales.⁵¹

Aboriginal/police relations emerged in public discourse along with other criticisms of the police at a time of declining police legitimacy. In the early 1970s public opinion polls showed that police legitimacy fell drastically.⁵² One of the reasons for the decline in legitimacy was that the police came under increasing scrutiny from other government bodies. The Victoria Abortion Inquiry in 1970, which attracted widespread national publicity, exposed systemic police graft and corruption through involvement in abortion rackets. The findings of the inquiry were symptomatic of a wider malaise affecting policing across the country and this was only one of a number of inquiries across Australia which exposed these problems.⁵³

By the mid 1970s, through the convergence of various forces such as continuing over-policing of Aborigines, heightened political mobilisation among Aborigines about policing, increased white recognition and declining police legitimacy led to the forceful emergence of Aboriginal/police relations as an issue in public discourse. Its status as a national media issue was marked by an ABC TV *Four Corners* program in 1973, which gave national exposure to the grave problems between police and Aborigines in Redfern.⁵⁴ In 1975 the New South Wales ALS along with Central Australian Aboriginal Legal Aid Service placed the issue on the national political agenda by calling for a wide-ranging royal commission to inquire into police/Aboriginal relations.⁵⁵ The fall of the Whitlam government in 1975 ended plans for such a national inquiry. Nevertheless, the shift in the level of recognition and public scrutiny was significant. Aboriginal/police relations were recognised as an issue of national political importance.

From 1975 onwards there has been a range of official inquiries into Aboriginal/police relations⁵⁶ and considerable academic interest⁵⁷ which has unanimously stressed the seri-

51 Wootten (1971), above n45 at 4; Whitlam, G. *The Whitlam Government 1972–1975* (1985) at 474.

52 Chappell, D and Wilson, P, "The Australian Police and Public Re-Visited" in Chappell and Wilson, above n51 at 318; Morgan Gallup Poll in Swanton, Harrigan and Psaila, above n41, Table 8.3 at 164.

53 Chappell and Wilson, id at 320–3 and York, B, "Baiting the Tiger: Police and Protest During the Vietnam War" in Finnane, M (ed), *Policing in Australia, Historical Perspectives* (1987).

54 "Redfern", *Four Corners* ABC TV, 14 April 1973.

55 "Police, Aborigines: Full Inquiry Urged" *SMH* 8 September 1975 and Wootten, J H, *Regional Report of Inquiry in New South Wales, Victoria and Tasmania* (1991) Royal Commission into Aboriginal Deaths in Custody at 230.

56 Foley, M, "Aborigines and the Police" in Hanks and Keon-Cohen, above n46 at 186, lists the following inquiries: the 1975 Sackville Report, *Law and Poverty*; the 1975 Report of the Australian Law Reform Commission on *Criminal Investigation*; the 1976 Report of the Laverton Royal Commission in Western Australia; the 1977 Report of the Lucas Criminal Law Inquiry in Queensland; the 1980 Report of the House of Representatives Standing Committee on Aboriginal Affairs on *Aboriginal Legal Aid*; the 1980 NSW Bureau of Crime Statistics and Research, *Public Drunkenness*; the 1980 Discussion Paper of the Australian Law Reform Commission on *Aboriginal Customary Law*; and the 1981 Report of the World Council of Churches, *Justice for Aboriginal Australians*. In addition: Anti-Discrimination Board, *A Study of Street Offences by Aborigines* (1982); Cunneen, C and Robb, T, *Criminal Justice in North-West New South Wales* (1987) NSW Bureau of Crime Statistics and Research; National Inquiry into Racist Violence in Australia, *Racist Violence: Report of National Inquiry into Racist Violence in Australia* (1991) Human Rights and Equal Opportunity Commission.

57 For instance, a selection of the early academic interest in this area: Tobin, P, "Aborigines and the Political

ous problems that existed in relations between police and Aborigines. Begrudgingly and belatedly in the mid 1970s the existence of problems in Aboriginal/police relations were recognised within the official discourses of the police administration.⁵⁸ For instance, in 1975 a National Senior Police Executive Officers' Course was held on "Police Minority Group Relations", within which Aboriginal/police relations was discussed. A national seminar in 1977 attended by senior police also covered the issue. Yet such discussions exposed that elements of the police force were keen to point out that the cause of the problem in Aboriginal/police relations lay with a small number of troublemaking Aborigines, or with Aborigines as a race and definitely not with police practices.

It was only in the early 1980s, with the issue of Aboriginal deaths in custody, that the complex issues around Aboriginal/police relations were pushed to national prominence and considered by a wide-ranging royal commission.⁵⁹ The advent of this royal commission firmly placed Aboriginal/police relations in public discourse as a major social problem.

The carrying-out of the Royal Commission into Aboriginal Deaths in Custody, and the public debate and questioning of the legitimacy of police actions which the royal commission engendered, provides an ending for the story of the development of public scrutiny of policing practices. However, there is another trajectory which relates to these developments. That is the link between the emergence of the Aboriginal/police problem in public discourse and the construction of Aboriginal communities being in a "law and order crisis".

The development and effects of Aboriginal social problems being constructed as a "law and order problem" has been traced by Chris Cunneen and others.⁶⁰ From the early 1970s newspapers in country towns have been reflecting fears of "crime waves" and a breakdown in law and order involving Aborigines. Increased policing was suggested as the primary remedy.⁶¹ These fears were, in part, from increased Aboriginal assertiveness and the breakdown of the previous control mechanism, the Aboriginal Welfare Board. While such concerns about a crisis in law and order were not original, the intensity and standing of support for such ideas was a new development. These ideas of a crisis gained currency through the 1970s and 1980s, shifting from articulation in a few country towns to recognition as an important issue by state political parties, particularly by the conservative parties.

Through the law and order discourse of the mid 1980s, Cunneen has noted, the "Aboriginal problem" was constructed very specifically as a "law and order problem". The government and police department responded to this concern with an extraordinary level of policing of Aboriginal communities; furthermore, this extraordinary level of policing

System" in Stevens, above n47, Tobin, P, "A Meeting of Nations" (1976) 2(4) *Leg Services Bull*, McCorquodale, J, "Clamp Down: Police Attitudes Towards Aborigines in New South Wales" (1984) *Aboriginal L Bull* and Foley, M, "Aborigines and the Police" in Hanks and Keon-Cohen, above n46.

58 "Preface — Report on Seminar" and Middleton, H, "Police-Minority Group Relations", *Aust Police College J* (1976). *Report on the Seminar on Police/Aboriginal Relations*, held at the Australian Police College, Sydney, 1–3 March 1977, Annexure, MacDonald, C, Sgt J A, "Police and the Reserve Aborigines in Queensland" (1978) 32(4) *Aust Police J*, and White, Sgt K J, "Some aspects of the Aboriginal Problem" (1979) 33(1) *Aust Police J*.

59 Wooten, H, *Regional Report of Inquiry in New South Wales, Victoria and Tasmania* (1991) Royal Commission into Aboriginal Deaths in Custody.

60 Cunneen, C, "Aborigines and Law and Order Regimes" (1990) *J Soc Just Stud, Special Edition Series, Contemporary Race Relations*, vol 3

61 Cunneen and Robb, above n6 at 207.

was widely considered as legitimate and justified.⁶² High numbers of police were deployed in areas with large Aboriginal populations and specialist squads, such as the Tactical Response Group, were used as a matter of course against Aboriginal communities.⁶³ For instance in Bourke, an area with a large Aboriginal population, there was one police officer for every 159 people, grossly higher than the state average of one police officer for every 503 people.⁶⁴ These practices and policies signified that Aborigines had become a priority for the police department, that there was an intensification of systematic police control of Aborigines.

The point to be made here is that one element which allowed this language of law and order crisis to proliferate was the pre-existing discourse of Aboriginal/police relations as a social problem. This discourse of policing as a social problem provided a fertile climate for the amplification of the discourse that Aborigines *were* a "social problem" which needed special police attention.

Thus, since the 1970s there have been two different trajectories in the way Aboriginal/police relations are understood. One recognises the social problems of policing and attempts to reform police practice. The other takes this recognition of an Aboriginal/police problem and names it as crisis, justifying and legitimating increased policing.

62 Above n61 at 35; Cunneen, C, "The Newspaper Reporting of Crime, Law and Order in North West NSW", (1988) 2 *J Stud Just*; Cunneen, C, "Constructing a Law and Order Agenda: Conservative Populism and Aboriginal People in North West New South Wales" (1989) 2(38) *Aboriginal L Bull*.

63 Above n61 at 37-9; Ronalds, C, Chapman, M and Kitchner, K, "Policing Aborigines", in Findlay, M, Egger, S and Sutton, J (eds), *Issues in Criminal Justice Administration* (1983).

64 Cunneen, C, "The Policing of Public Order: Some Thoughts on Culture, Space and Political Economy" in Findlay, M and Hogg, R (eds), *Understanding Crime and Criminal Justice* (1988) at 204.