

# Book Reviews

## Andrew J Goldsmith (ed), *Complaints Against the Police: The Trend to External Review*

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While researchers acknowledge that the policing of young people is no easy task for the police, one of the most common concerns to emerge from their work is the disturbingly high levels of violence experienced by many young people in the course of their interactions with police. Reports that some police regularly harass, assault, and intimidate young people are commonplace.<sup>1</sup> Aboriginal young people say they have been beaten, threatened, assaulted, and sexually assaulted.<sup>2</sup> Asian young women speak of strip searches, sexual assault and harassment; Asian young men tell of assault, harassment, and unnecessary and invasive strip searches.<sup>3</sup> How can police be made accountable, to their superiors, to young people, and to the wider community, for the acts of violence and other unacceptable and possibly criminal behaviour which research evidence has exposed?

This question needs to be considered in the context of further research findings which indicate that young people view "police violence as a routine part of their interaction with police".<sup>4</sup> Homeless young people say they expect to be treated violently by the police.<sup>5</sup> In addition, "many young people believe that there will be negative consequences if they complain about their treatment".<sup>6</sup> Not surprisingly, therefore, young people rarely report that they have been badly treated by the police. Even more rarely do young people utilise official avenues for making complaints about police behaviour towards them.<sup>7</sup> How, then, can young people with genuine complaints about their treatment by the police be encouraged to utilise official complaints mechanisms? How can police attitudes and behaviour

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- 1 See, eg, O'Connor, I, *Our Homeless Children: Their Experiences, Human Rights and Equal Opportunities Commission* (1989); Youth Justice Project, *Kids in Justice: a blueprint for the '90s* (1990), ch 7; Alder, C, "The young people" in Alder, C, O'Connor, I, Warner, K and White, R (eds), *Perceptions of the treatment of juveniles in the legal system* (1992), National Clearinghouse for Youth Studies, Hobart; Daniel, A and Cornwall, J, *A Lost Generation?* (1993); Federation of Community Legal Centres, Victoria, Report into Mistreatment of Young People by Police (June 1991) FCLC, Melbourne; Youth Justice Coalition, *Nobody Listens* (1994).
  - 2 Cunneen, C, *A Study of Aboriginal Juveniles and Police Violence* (1990); Cunneen, C, "Enforcing Genocide? Aboriginal Young People and the Police" in White, R and Alder, C (eds), *The Police and Young People in Australia* (1994).
  - 3 Chan, J, "Policing Youth in 'Ethnic' Communities: Is Community Policing the ANew South Waleser?" in White and Alder, id; Youth Justice Coalition, above n1.
  - 4 Hall, S, "Reform and Change: An Agenda for the 1990s" in White and Alder, above n2 at 239.
  - 5 Alder, C, "Police, youth and violence" in Gale, F, Naffine, N and Wundersitz, J (eds), *Juvenile Justice: debating the issue* (1993).
  - 6 O'Connor, I, "Young People and Their Rights" in White and Alder, above n2 at 94.
  - 7 See, eg, Parliament of New South Wales, Report of the Joint Committee on the Office of the Ombudsman, Access and Awareness Inquiry (September, 1994), Sydney; Alder, Youth Justice Coalition, and Federation of Community Legal Centres, above n1.

towards young people be improved? The Youth Justice Project succinctly expressed the problem:

... the central problem of police accountability in the case of young people is that, precisely because they are young, socially marginal, and on the whole without independent financial resources, they are not usually part of corporate institutions which contribute to the systems of accountability. Nor are they generally able to make use of legal methods of redress. ... It is therefore imperative ... that wherever possible young people should be involved in institutional arrangements for accountability and that *discussions as a matter of course consider the implications of proposals and procedures for young people*.<sup>8</sup>

It was therefore with a sense of muted expectation that I opened Goldsmith's collection of essays. I hoped that, here in these essays by experts from the English speaking world, there might be included some consideration of "the implications of proposals and procedures for young people". Would this work provide any insights into the problems of police accountability in the instance of young people?

Mostly I was disappointed. It would be most unusual for young people's concerns and issues to be acknowledged in any generalist work on police accountability (or indeed any other criminal justice topic). Maybe I was expecting too much after all the title did include the words "the trend to external review" and the dust jacket blurb claimed only that the book "should prove an enormous influence in the continuing discussion on the greater public accountability of police forces throughout the world". The book, says the blurb, "examines some linking themes between the systems for dealing with complaints ..., including the structural factors ensuring the dynamism of reform attempts in this area and the role of law in dealing with organisational misconduct". Neither the positions of young people in all their diversity nor police policies concerning young people are included in the structural factors considered in the book.

What I did find was an overwhelming concern with the debate between external and internal accountability mechanisms in every country represented in the book,<sup>9</sup> a sense that at least in the English speaking world, police unions will support or oppose external mechanisms when it is politically expedient to take one position or the other, and an understanding that instituting mechanisms for accountability (internal, external, or some mix between these two extremes), whether or not such mechanisms are capable of generating institutional change in police behaviour, is an inherently and problematically politically charged activity. Most of the police complaints bodies described and analysed in these essays exist (in some case existed) on tentative terms, and are (or were) subject to political whim, police union pressure, and public cynicism and distrust.

Goldsmith claims that the book "is not fundamentally concerned with providing 'better solutions' in any particular jurisdiction or with discovering the universally 'perfect' complaints system" (p5). The collection, he says, is concerned with the trends from internal to external review of police practices, the changing understandings of "community politics and democratic control", and the "legitimacy of the police institution itself and the potential role of complaints mechanisms ... in helping to restore public confidence in" the police (assuming of course that there was a time when "the public" had full confidence in the police!), and the relationship between social and legal change (p3, 4).

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8 Youth Justice Project, above n1 at 220-1 (emphasis added).

9 The essays address the issue in Victoria (Australia), Australia generally, Toronto (Canada), Britain, Northern Ireland, and the United States.

While these claims are accurate, the book does nevertheless provide some useful insights which are relevant to the issue of controlling police behaviour with respect to young people. These insights are the subject of this review.

An important aspect of the "restoration" of public confidence in the police is the generation of better expectations in the minds of future adults about the behaviour they can reasonably expect of police. Attitudes towards police inculcated through negative experiences with police during adolescence may well be carried over into adulthood. Will the existence of external complaints mechanisms help to change police attitudes towards young people and contribute towards the generation of confidence in the police in the minds of young people? Clearly the trend to external review may be useful in this regard provided that young people place some confidence in the ability of such external mechanisms to listen to, respect, and act on their concerns. The time taken to investigate complaints which is a feature of all the complaints mechanisms, internal and external, described in the essays in this book suggests that few young people would consider that they would gain any satisfaction in making an official complaint. The hostility by police towards the (external) short lived Victorian Police Complaints Authority, whose life and death is described and mourned in Ian Freckelton's chapter<sup>10</sup>, gives little hope that the concerns of young people would be given any weight in such furious battles.

Another point raised and discussed in Goldsmith's collection which might more fruitfully be applied to the issue of the accountability of police in their interactions with young people is the argument that complaints should be placed in a wider perspective than that of individual police deviance,<sup>11</sup> so that general patterns of behaviour can be revealed, and policies and practices can be adjusted accordingly. As Goldsmith argues,

Given that policing is likely to remain as a contentious topic, complaints need to be seen not simply as threats to existing policies and procedures or individual officers but more importantly, as opportunities for re-examination of organisational politics and practices, particularly in terms of their community-relations dimension, of immense potential benefit to the police as well as the public. The issue then is not whether or not complaints should be discouraged or tolerated, but whether there are adequate mechanisms and resources to ensure that citizen's complaints are articulated fully and that the information provided by complaints is systematically collected and analysed for the administrative lessons it provides for the future organisation and practice of police work.<sup>12</sup>

Other contributors take up this theme. Mike Maguire, a leading British criminologist whose chapter draws on the results of a two-year empirical study of the British Police Complaints Authority<sup>13</sup>, argues that more use should be made of the practice of drawing

10 "Shooting the Messenger" in Goldsmith, A (ed), *Complaints Against the Police: The Trend to External Review* (1991). The Authority, which was given a jurisdiction over complaints against the police formerly possessed by the Ombudsman, operated from 1986 to 1988. The average time for resolution of a complaint by the Authority during its lifetime averaged between eight and ten months (p75).

11 Robert Reiner, whose chapter is based on interviews with 40 of the 43 chief constables in England and Wales, sought to ascertain the "views from the top" on the system for handling complaints against police. He presents a provocative argument on responses to perceived police "deviancy". See "Multiple Realities, Divided Worlds: Chief Constables' Perspectives on the Police Complaints System" in Goldsmith, above n10 at 212.

12 Goldsmith, above n10 at 19 (emphasis in original).

13 The study was conducted with Claire Corbett, in 1986-88. Fieldwork included observation and file analyses in the offices of the PCA, research into handling of complaints in three police-force areas, and questions in the 1988 British Crime Survey. See Maguire, M, "Complaints Against the Police: the British

general lessons from complaints ... and feeding these back to the police in the form of recommendations for changes in policy, practice, or training, but concludes that "unfortunately, such an ideal is far from the present reality".<sup>14</sup>

If this ideal is far from the present reality in the context of adult's complaints about the police, how much further from reality is the ideal in the context of young people's complaints? As we have seen, very few of these latter complaints are ever recorded in the official register, irrespective of the constitution of the complaints mechanism. The Youth Policy recently released by the New South Wales Police Service was not based on systematically collected and analysed information provided by the Ombudsman or the police internal complaints unit, drawn from complaints about police by young people, because this sort of information is simply not available.

Werner E. Petterson, speaking from an American perspective, argues for "citizen oversight, where citizens and police officers debate the ends and means of policing in relation to specific circumstances raised by a complaint".<sup>15</sup> This sounds like a good idea. Unfortunately, police and others concerned in the handling of complaints rarely conceive of young people as citizens.<sup>16</sup> Police who have a formal complaint made about them by young people, rather than accepting its validity, may interpret the complaint as an effort by the young person "to discredit the police or justify their own behaviour," or may believe that the young person has been pressured to make the complaint by parents or youth agencies.<sup>17</sup> There is a further related problem here: where Community Consultative Committees have been established with an aim of generating constructive dialogue between police and citizens of the kind envisaged by Petterson, "young people are more likely to be seen as the problem or the subject of the committee's attention, rather than as an appropriate constituent of it".<sup>18</sup>

Perhaps the most useful suggestions for "controlling the constable" in encounters with young people are made by Mike Maguire and Andrew Goldsmith.<sup>19</sup> Goldsmith's suggestions have already been briefly canvassed. It should be noted however, that he recognises that the "conservative nature of most police forces" may be a considerable obstacle to the organisational change he is suggesting. His conclusions are worth considering in the context of the policing of young people:

The challenge posed for external review bodies is to persuade the police of the wider implications of complaints and of their own legitimate involvement in the process, and of the mutual benefits and commonality of interests at stake in the handling of complaints.<sup>20</sup>

Maguire, drawing on the British experience of the operation of the *Police and Criminal Evidence Act*, suggests that controlling the behaviour of police is not merely an activity

Experience", in Goldsmith, id at 179.

14 Id at 206.

15 Petterson, W, "Police Accountability and Civilian Oversight of Policing: An American Perspective", in Goldsmith, id at 273.

16 See, for example, White, R, *No Space of Their Own: Young People and Social Control in Australia* (1990); White, R, "The Police" in Alder et al, above n1; O'Connor, I, "Young People and Their Rights" in White and Alder, above n2; Archard, D, *Children: Rights and Childhood* (1993) at 704.

17 White (1992, above n18 at 36.

18 Youth Justice Project, above n1 at 220.

19 Chapters 5 and 1 respectively in Goldsmith, above n10.

20 Id at 56.

which occurs after the event, but should ideally be accomplished through a mix of measures instituted at various points along the spectrum of police practices:

it has to be recognised that police complaints are only one piece of the jigsaw: without improvements in training, supervision, police-public consultation, and other broader mechanisms of accountability, whatever way complaints are handled will make little difference to the fundamental problem of regaining full confidence in the police.<sup>21</sup>

This is a particularly important point to bear in mind, given O'Connor's argument that "many abuses of young people's rights occur in the process of police routinely carrying out their functions. It is these routine practices of policing which are in question, but complaints systems are not designed to review 'ordinary' events."<sup>22</sup>

Goldsmith's book does not directly address the implications for the policing of young people raised by the issues canvassed by its authors. Nonetheless, as I have tried to illustrate, the book does contain many insights which are applicable to the questions posed at the outset of this review. I therefore recommend it to those working in the field of juvenile justice.

Readers of this journal should note that I did set out to write a review of this collection of essays which summarised and discussed the material in each piece. The book was published in 1991 and has been the subject of a number of other reviews which readers may wish to consult.<sup>23</sup>

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21 Maguire, above n10 at 208.

22 O'Connor (1994), above n2 at 95.

23 See reviews by: Munster, A, in (1992) 20 *J Crim Just* 489; Morgan, R, in [1993] *Public Law* 698; Wasik, M, in (1993) 32 *Howard J Crim Justi* 184; and Dixon, D, in (1993) 16 *UNew South Wales LJ* 593.