

Contemporary Comment

*Truth in Policing**

The Wood Royal Commission into police corruption has exposed a secret long shared by the police, the legal profession and those who have found themselves from time to time outside the law: that there is a great deal of difference between the mythology of criminal justice and the way the system actually works.

The morality play being enacted at the Royal Commission has shocked the public of New South Wales and shaken their faith in one of our most important foundation myths. This faith will not be easily restored. Certainly, it will demand a great deal more than prosecuting a few weak and foolish men who have failed to conform to the standards of public conduct which they were meant to enforce. What the Royal Commission has exposed is not just the occasional pocket of corruption within the police service, but the institutionalised lying which has been going on for decades about what it is that the police actually do in our society.

To be fair, there has always been a great deal of dishonesty about how the criminal justice system works, and it is in those moments when the public catches up with what is really going on, that governments are brought down and individual careers are destroyed. It was inconsistency between the policy and practice of the ticket of leave scheme that terminated the career of Lachlan Macquarie. It was the mythology about who really exercised the prerogative of mercy which brought down the first Parkes Ministry in 1875. And it was the dishonesty of the remissions system which destroyed the career of one of New South Wales' brightest Attorneys-General, Bernhard Wise, in 1902.

Likewise, it was in the hypocrisy which surrounded the independence of the judiciary and the exercise of the early release power that Rex Jackson was able to hide his corrupt activities. And it was by way of a reaction to this institutionalised lying (and not, as some criminologists have suggested, out of a desire to introduce tougher penalties) that the Liberal-National Party government in 1989 introduced "truth in sentencing".

The police Royal Commission has done so much more than expose the dishonesty of a number of New South Wales and Federal police; it has exposed the dishonesty of policing itself. And any attempt at restoring public confidence in the police service must start with a policy of "truth in policing". David H Bayley, Professor of Criminal Justice at New York State University, begins his recent book *Police for the Future*:

The police do not prevent crime. This is one of the best kept secrets of modern life. Experts know it, the police know it, but the public does not know it. Yet the police pretend that they are society's best defence against crime and continually argue that if they are given more resources, especially personnel, they will be able to protect communities against crime. This is a myth.¹

* Adapted from a paper presented at the Institute of Criminology Seminar "Police Reform: Options for Change" 20 September 1995 at Parliament House, Sydney.

1 Bayley, D H, *Police for the Future* (1994) at 3.

“Truth in policing” is more than just good public relations. It is essential if the government is to tackle corruption in the New South Wales police service. Because it is in the space between what is promised by politicians and what can actually be delivered by the police that hypocrisy flourishes. It is in that gap between the expectations of the public and the realities of policing that cynicism first takes root. And it is in the unlearning of what was taught at the academy and the relearning of policing skills for the real world that bad habits are communicated from one generation to the next.

“Truth in policing” is more than just having an honest police service. It is about restoring the rift which has developed between policing and the community. The term “thin blue line” was adapted from a phrase used in 1854, by *Times* correspondent William Howard Russell, describing part of the Battle of Balaclava. From a vantage point 500 feet above the plain, Russell could see the thin red line of Campbell’s 93rd Highlanders as they withstood charge after charge of the Russian cavalry. At that point in time, the 93rd were all that stood between the Russian army and Balaclava, and Russell later wrote of them as “that thin red streak tipped with a line of steel”.²

The image is a sobering one when it is recalled that, all too often, the police see you and I as standing on the Russian side of the “thin blue line” and not behind them at Balaclava. There will be no healing of this rift between the police and the general public until we honestly come to terms with the limitations of policing in a modern urban society.

We cannot repair the corruption and the cynicism being revealed at the Wood Royal Commission until we agree what it is that we want the police to do. For a start, we must give the police achievable objectives. We continue to set the police herculean tasks, making demands which are simply incapable of being met, and for which we as a community are primarily responsible.

The Premier of New South Wales, Bob Carr has recognised this in his proposal for the decriminalisation of prostitution. But partly because of the political risks involved, and partly for personal reasons, the New South Wales Premier is unwilling to adopt the same approach when it comes to drugs. But regardless of the present government’s policy position on this issue, we will decriminalise drugs, even hard drugs, not simply because the legal approach has failed to control the problem, but for the same reason that the Americans gave up on Prohibition — because we will grow tired of corrupting wave after wave of police officers and public officials.

In giving them the primary responsibility for cleaning up the drug problem, we have set the police an impossible task. This is an objective which they can never achieve. And the result of persistent failure is that you and I become cynical about the police, and they become cynical about the job which we have set them.

David Bayley is right — the police do not prevent crime (although in the absence of *some* police force, no doubt we would have a much more serious problem). It is the quiet labours of parents and teachers in socialising future generations that will have the greatest impact on law and order in the decades to come. And it is the physical design of our cities and the success which we have in reconstructing some concept of community in our urbanised environment which will have the greatest influence on crime rates here and now.³

2 Perrett, B, *At All Costs!* (1993) at 41.

3 Jane Jacobs reminded us of this more than 30 years ago; Jacobs, J, *The Death and Life of Great American Cities* (1992).

You and I must accept responsibility for the burden of lawlessness which has already been inflicted upon the next generation. The police are not to blame. The difficulties facing urban blacks in North America are much more severe than those facing white Australians, but the following passage from a recent issue of *The Atlantic Monthly* highlights the generational dimensions of the law and order problem:

We first notice the children of the ghetto when they grow muscles — at about the age of fifteen. The children born in 1965 reached their fifteenth year in 1980, and 1980 and 1981 set new records for criminal violence in the United States, as teenage and young adult blacks ripped at the fabric of life in the black inner city. Nevertheless, of all the black children who reached physical maturity in those years, three quarters had been born to a married mother and father.

Not until 1991 did we experience the arrival in their mid-teens of the first group of black youths fully half of whom had been born to single mothers — the cohort born in 1976. Criminal violence particularly associated with young men and boys reached new peaks of destruction in black communities in 1990 and 1991.

In the year 2000 the black youths born in 1985 will turn fifteen. Three fifths of them were born to single mothers, many of whom were drug-addicted; one in fourteen will have been raised with neither parent at home; unprecedented numbers will have been subjected to beatings and other abuse; and most will have grown up amid the utter chaos pervading black city neighbourhoods ...

No matter what efforts we now undertake, we have already assured the creation of more very violent young men than any reasonable society can tolerate, and their numbers will grow inexorably for every one of the next twenty years.⁴

The eighteenth century English philosopher, John Locke, wrote, that in the beginning, all the world was America. He was, of course, referring to the European view of the Americas as untouched wilderness. If we are not able to find some way of making our urban communities work better than the United States has done, it might well be said, “in the end, all the world will be America”. It is too late for us to have much impact on the coming generation. They are already spoken for. The challenge is how to leave a legacy of law and social order for the generation after next.

What policymakers must recognise is that there is little that the police can do to correct social problems on this scale. There are more than 500 000 police officers in the United States. Bill Clinton has promised another 100 000. And yet it has been estimated that it would take another 5 000 000 police to restore the ratio of police officers to violent crimes which existed in the 1960s.⁵

Of course, what you and I have police officers doing most of the time has very little to do with crime prevention, in any case. When I call the police after my home has been burgled, I know that if one of my neighbours did not recognise some suspicious car or person hanging about the neighbourhood, then the odds of the police catching the culprit are extremely low.

So why do I call them? If I'm truthful about it, the reason why I call the police is that I want to be reassured that there is order in the world. This is not a terribly satisfying role for the police, because they are obliged to play their part and ask questions and dust for fingerprints and generally pretend that there is some hope of catching the offender. Indeed, the

4 Walinsky, A, “The Crisis of Public Order” (1995) *The Atlantic Monthly* July at 49.

5 Id at 39–40.

young constable who came out last time we were burgled — in the middle of the last State election campaign — shoved a bundle of pamphlets on community policing into my wife's hand and muttered, "Here, I'm supposed to give you these."

Much of what the police do, day to day, is to restore order to uncertain or unstable situations. Bayley says that modern police perform two major functions: authoritative intervention and symbolic justice:

(i) "The purpose of authoritative intervention is to restore order. Almost no attempt is made to correct underlying conditions that have led to the need for police intervention."

(ii) "Symbolic justice is the realm of detectives and traffic officers ... Its purpose is demonstrative, to show offenders and public that a regime of law exists."⁶

I'm not sure that Bayley has got it right, but it is at least an honest attempt to specify what it is that the public expects the police to do. It is this kind of honest analysis which is fundamental to "truth in policing".

It is this lack of agreement about the objectives of policing which explains why there is so little true management in the police service. Of course the police have a corporate plan, but it is built on a fiction. And for that reason there is no real ownership of the plan within the service itself, let alone the community at large. James Q Wilson wrote in 1989 in his classic work, *Bureaucracy*:

When agencies have vague or inconsistent goals (as is usually the case), what the workers do will be shaped by the circumstances they encounter at the job, the beliefs and experiences they bring to the job, or the external pressures on the job.⁷

In the case of the police, Wilson argues that it is "situational imperatives" — the insistent demands of daily circumstances — which shape behaviour.

All of these circumstances lead the street cop to define the job not in terms of 'enforcing the law' but in terms of 'handling the situation'. To handle the situation, one must first 'take charge'. Out of the need to take charge, supplemented by a sense of the physical danger inherent in the occupation, the officers develop what Jerome Skolnick has called a 'working personality'. ... the heads of government agencies often ignore these situational factors and thus either allow operators to manage them by instinct or induce the operators to manage them in ways that lead to ineffectiveness, disorder or corruption.⁸

On the one hand, Wilson is saying that formal education fails to prepare young police officers for the tasks which they will be required to perform day in and day out. But he is also arguing the case for new management systems which take account of the day-to-day needs of policing in the real world. David Bayley makes this same point:

The command-and-control system of police management is paradoxical: It seeks to regulate in minute ways the behavior of individuals who are required by the nature of their work to make instant and complex decisions in unpredictable circumstances. Police organizations allow enormous discretion in practice while at the same time maintaining a top-down command system.⁹

In New South Wales, this discretion granted to the individual police officer is reinforced by a legal grant of authority by way of the common law on the constable. One outcome of

6 Above n1 at 34.

7 Wilson, J Q, *Bureaucracy* (1989) at 34.

8 Id at 37–8.

9 Above n1 at 64.

this dishonest system of management is that senior police are (in theory at least) held accountable for actions over which they have very little, if any, control.

Since the discipline system is supposed to prevent mistakes, police organizations repress knowledge of mistakes rather than learning from them. Mistakes prompt a single response: Tighten discipline, punish individuals. If things go wrong, it is never the organization's fault — it is the fault of the working officer who failed to follow the rules.¹⁰

It is for this reason that the reform initiatives for the New South Wales police service announced thus far are unlikely to succeed. To hold commanders accountable for corruption within their ranks, without overhauling the command structure, would be to produce a great injustice and possibly to make the underlying problem worse. It is impossible for us to have "truth in policing" as long as the present command-and-control structure remains in place. The simple fact is that the police service (as it is presently designed) is poorly equipped to cope with crime in an urbanised society. "Community policing" recognises the problem, but thus far it has failed to find the solution.

Another outcome of the dishonesty which presently pervades policing in Australia is the repeated failure of the system and (as a result of this) the multiplication of rules dictating to police how they are to go about their jobs. Instead of getting on with their jobs, police officers find themselves navigating the shoals laid down by complex regulations. In this sense, I would suggest that the way ahead after the Royal Commission lies not in even more detailed regulation of police behaviour, but in less. (This is a matter of some concern to me, since the Royal Commission is dominated by lawyers whose preference for command-and-control solutions is a matter of instinct.)

The key to police drinking on the job is not to introduce random breath-testing, but to fix the culture of policing, which is quite obviously broken. No one wants to go to work and spend half the day drinking. No one goes to work with a view to taking bribes. Most of us go to work, not just to make money, but because we think that what we do makes a difference. None of the police officers who have appeared before the Wood Royal Commission in recent weeks joined the police service with the intention of becoming corrupt.

The New South Wales police are broadly representative of the rest of New South Wales society (or at least male Europeans). In fact, they are probably somewhat *more* honest and dedicated than the rest of us: they chose policing as their career because they wanted to make a difference in the world. What happened? What is wrong in the culture of the New South Wales police service, what is wrong with the systems, that led these police officers to become so cynical and disenchanting that they would take a bribe?

If we find the answer to that question, we will have begun to address the corruption and the alcoholism. Random breath-testing will not fix these problems and by deflecting our attention from the underlying causes, it might even make it worse.

I would suggest that US Vice-President Al Gore's prescription for the federal bureaucracy applies to the police almost as much as it does to mainstream public servants. (I have amended his words slightly to make them apply to the police):

The cure has become indistinguishable from the disease. The problem is not lazy or incompetent [police officers]; it is red tape and regulation so suffocating that they stifle every ounce of creativity. No one would offer a drowning man a drink of water. And yet, for more than a decade, we have added red tape to a system already strangling in it.

10 Id at 65.

The [police service] is filled with good people trapped in bad systems ... When we blame the people and impose more controls, we make the systems worse ...

Innovation, by its nature, requires deviation. Unfortunately, faced with so many controls, many [honest police officers] have simply given up. They do everything by the book — whether it makes sense or not.¹¹

This has been no more than a tentative exploration of the concept of “truth in policing” and I would not claim that I have thought through all of its consequences. But on the basis of this preliminary analysis, I would suggest that the elements of such a strategy might include the following:

- Politicians, the general public, the media and the police hierarchy must reach an agreement about what it is that we want the police to do.
- Any such “understanding” must recognise the limits of policing as a means of crime prevention. It must acknowledge that the primary force for the prevention of crime is the community itself.
- Formal police education must prepare young cadets for the tasks which police actually perform day-to-day.
- Management systems in the police service must be reconstructed to take account of the “bottom-up” nature of policing.
- Recognising the need for greater accountability on the part of the police, we must avoid the temptation to just add more rules to the book.

Gary L Sturgess

Principal of Sturgess Australia, former Director General of the New South Wales Cabinet Office.

11 Gore, A, *Creating a Government That Works Better and Costs Less: Report of the National Performance Review* (1993) at 2.