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CIVILIAN OVERSIGHT OF POLICE

A Test of Capture Theory

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Many jurisdictions have created external oversight bodies for police following problems of recurring misconduct and the failure of internal control mechanisms. Questions inevitably follow about the effectiveness of the new bodies to detect and prevent abuses of power. One potential source of ineffectiveness is undue influence or 'capture' by police. This paper reviews developments in external oversight internationally and examines the issue of capture in detail using an Australian case study of the Queensland Police Service and the Queensland Criminal Justice Commission (CJC). The question of capture was assessed by analysing reports on significant issues involving the CJC and police. Cases of zealous enforcement of rules were apparent, but the study identified a generally weak approach on the part of the Commission to enforcement and direction. Crucial elements of the CJC's structure and functions have exposed it to capture; including a role in facilitating police management, joint operations against organized crime, and reliance on seconded police investigators. The available evidence did not confirm a case of direct capture, but there was evidence from audits of investigations that police involvement in investigations and discipline contributed to a marked attrition of complaints. Weakness in oversight could also be related to the combined effects of an appeasement strategy, an overly legalistic organizational culture, and inadequate quality control. Practical measures are recommended to improve accountability that have general application to police oversight bodies. These include a clearer separation between police and the regulator, quality assessment measures, and exclusion of a facilitation role to allow the regulator to focus on police conduct.

External Oversight of Police

The thesis that policing is intrinsically a high-risk occupation for corruption is now an accepted tenet of police studies (Kappeler *et al.* 1994). Law enforcement, by its very nature, attracts illicit forms of attempted influence against prosecution. Strategic difficulties in supervising operational police means there is a low risk of detection of illegalities. Legal constraints on police and antagonistic relations with subject groups mean officers are strongly tempted by extra-legal 'remedies' to the problems they are required to manage; hence the recurring issues of assault and fabrication of evidence. Traditional controls such as internal discipline and review of police procedures in court have been shown by successive inquiries in many countries to be easily subverted. Police corruption has also frequently been enmeshed with political corruption or been neglected by politicians concerned with preserving the status quo. Analyses of reform measures show

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corruption will recur unless strong preventive measures are established and maintained over time (Sherman 1978).

In the United States, the Knapp Commission in New York City is recognized as one of the first inquiries to significantly break the cycle of reform and corruption. The 1972 report diagnosed the failure of internal procedures to prevent misconduct because of the chronic inability of police to investigate colleagues. The report was emphatic in its rejection of this process:

> Any proposal for dealing with corruption must . . . provide a place where policemen as well as the public can come with confidence and without fear of retaliation. Any office designed to achieve this must be staffed by persons wholly unconnected with the Police Department or any other agency that routinely deals with it. (Knapp 1972: 14)

Despite this conclusion, reform of the NYPD focused almost exclusively on internal measures. With the overt commitment of Commissioner Murphy, a zealous internal affairs department minimized corruption using informants, integrity tests and a management focus on minimizing corruption hazards. In the 1990s a complacent attitude allowed corruption to recur in small pockets. In response, the 1994 Mollen Commission recommended stringent oversight by an independent commission with investigative powers (Mollen 1994). The 1970s and 1980s saw other US cities introduce civilian review boards to oversee police investigations of complaints. Deemed a failure in many cases (Kappeler *et al.* 1994), the boards suffered from under-resourcing and limited powers. A 1995 review prepared for congressional members identified approximately 90 such review boards. This is a very small number in a country with over 10,000 police departments, and only about 30 of the boards had independent investigative powers (Glazer 1995).

In England and Wales, the 1962 Royal Commission on the Police found there was no formal system for dealing with complaints against police. The Police Act of 1964 introduced procedural rules, including involvement of the public prosecutor in some matters and a requirement that investigations be conducted by an officer outside the subject officer's division. Despite the subsequent introduction of a Police Complaints Board, a pioneering study (Russell 1976) identified an extremely low substantiation rate for complaints. Russell's analysis emphasized the problem of inadequate evidence—a situation compounded by police discrediting of complainants. Russell also recognized that the anti-social activities of those coming to police attention predisposed them to make complaints against police. Nonetheless, he noted a lack of public confidence in the system, insufficient guarantees of impartiality, unjustified secrecy, and no opportunities for client feedback.

These deficiencies underlay recurring allegations of corruption in English policing in the 1970s, particularly in the London Metropolitan Police. Commissioner Mark's commitment to vigorous investigations forestalled a Royal Commission, although Punch's (1985) study resulted in the conclusion that 'thirteen years of investigation has not rid the Met of corruption, which may in fact have taken more devious and dangerous forms' (p. 39). Attempts to expand independent review were thwarted by the resistance of police unions and police chiefs (Lambert 1986). Following the race riots of 1981 the Scarman Report concluded that public confidence in police integrity could not be achieved without independent investigation of all complaints (Scarman 1986). However, the report recognized practical difficulties in this recommendation and outlined a

compromise model of civilian supervision. This was partially reflected in the establishment in 1985 of the Police Complaints Authority (PCA), which supervises investigations of serious complaints and serious incidents. The PCA also reviews the outcomes of investigations and authorizes disciplinary decisions. Plans are currently in place to implement a civil standard of proof in disciplinary cases and authority to conduct independent investigations in exceptional cases (PCA 1998). The PCA Annual Report does not include quantitative data on audits of investigations; although a qualitative method is used to report on a large number of specific cases, revealing a very mixed picture of the quality of police investigations.

Until recently, policing in Australia has been marked by a pattern of corruption allegations, partial inquiries, and failed reforms. The first breakthrough occurred in Queensland with the Fitzgerald Royal Commission. Fitzgerald (1989) revealed a close connection between entrenched police corruption and inadequate institutional protections against public sector misconduct. The report recommended restructuring of the political system and major reforms in police management. In 1990 the Criminal Justice Commission was created as an independent body charged with investigating complaints of police and public sector misconduct and overseeing reform. The Commission's powers to conduct investigations and adjudication, and to direct police management, have been amongst the most extensive of any oversight body in the world. The second major 'successful' inquiry in Australia was the Wood (1997) Commission in New South Wales. The report revealed more extreme forms of malpractice than in Queensland, but police corruption by this time was largely independent of politics. Reforms were therefore focused on remedies specific to policing. A complicating factor in the NSW case was that from 1989 the state had a powerful external anti-corruption body, the Independent Commission against Corruption. Despite some successes against police corruption, the ICAC had jurisdiction for the whole public sector and lacked resources for the kind of deeply probing investigations conducted by the Wood Commission, especially in the area of high-technology surveillance and sting operations. A specialist Police Integrity Commission was created in 1997 to investigate serious complaints and review investigations of lesser complaints by police and the Ombudsman's Office. Despite problems of corruption and abuses of authority elsewhere in Australia, most states and territories have kept to the minimalist system of Ombudsman reviews of police investigations. [1]

Assessing Case Dispositions

How effective is civilian oversight of police conduct? One way of responding to this question is to examine data on the disposition of complaints, from initial receipt through to substantiation rates and final penalties. As a form of evaluation, however, this is fraught with confounding variables (Walker and Bumphus 1992). Numbers of complaints do not provide a clear guide to police behaviour because public confidence in either internal or external procedures might greatly influence the rate of complaints.

[1] For a recent synopsis of developments in external review internationally see O'Rawe and Moore (1997), and on Canada see Lewis (1991) and Roach (1995).

A decline could reflect the deterrent effect of vigorous investigations or a deterioration in public confidence. Different ways of categorizing complaints also make for difficulties in comparing types of complaints systems. While substantiation rates are seen as an important indicator of agency zeal, low substantiation rates by civilian review bodies of between 2 and 8 per cent have been described as 'an international phenomenon' (Walker and Bumphus 1992: 16). This is similar to a 10 per cent or lower substantiation rate for many internal affairs investigations (Lersch 1998; Pate and Fridell 1993). In England and Wales in 1997–8 the PCA substantiated 26 per cent of the 4,390 cases fully investigated, but this constituted only 6 per cent of 18,345 complaints. The majority were 'dispensed' or deemed to have insufficient evidence (PCA 1998: 13). Internal affairs units in US police departments have reported substantiation rates as high as 48 per cent (Griswold 1994) and 25 per cent (Dugan and Breda 1991), but without data on penalties. Available data on penalties are also inconclusive and generally point to only minor differences between external and internal systems. However, a criterion of punitiveness is itself questionable, given surveys showing complainants are less concerned with punishment than with timeliness in dealing with their matter and with forms of conciliation (Maguire 1991). In assessing final outcomes, variations in agency powers must also be considered. In their US study, Walker and Bumphus (1992) pointed out that none of the bodies in the 50 cities examined had the power to direct disciplinary procedures. They could only make recommendations, and common practice was simply to review case files.

Capture Theory

Those concerned with police probity are caught to some extent between a principle supporting external control, based on the conflict of interest inherent in internal control, and the empirical evidence, which does not show a dramatic difference in outcomes between the two approaches (Reiner 1991). High rates of attrition of complaints might be explained with reference to the intrinsic problem of evidence or with reference to a high volume of vexatious complaints. On the latter question, in a rare study, Maguire (1991) found that the large majority of complaints made to the PCA appeared to be genuine and without malice. An alternative explanation of attrition derives from the study of regulatory behaviour and the theory of 'regulatory capture'. Capture theory explains poor performance in regulation with reference to techniques by which the group being regulated subverts the impartiality and zealousness of the regulator. At one end of a spectrum are conscious relationships of bribery or blackmail. At the other end are institutional arrangements generating subtle forms of inappropriate influence, sometimes with the best of intentions in mind. Sources of undue influence include personnel interchange and identification with industry values through frequent contact. 'Agency survival' can also be a significant factor in appeasing interest groups that have influence with the agency's political masters (Huntington 1952). Grabosky and Braithwaite's (1986) study found the approach of regulatory agencies possessing substantial powers usually took the form of 'platitudinous appeals' and 'token enforcement', and many of the agencies studied were highly exposed to capture. Risk factors included extraneous tasks that drew resources away from the central

regulatory task and facilitated inappropriate links between the regulator and regulatee. While Grabosky and Braithwaite recognized the value of conciliatory strategies such as education and advice, they emphasized prosecutions as an important index of commitment given high rates of regulatory breaches.

Although the term 'capture' has not been adopted in the literature on police oversight, the concept is implied in the issue of independence from police influence. In a Canadian study, Lewis (1991: 173–2) noted that a degree of tension is inevitable between police and civilian agencies if oversight is to be genuinely impartial: 'Co-option of the civilians by police is as certain a defeat as loss of mandate.' Maguire has argued that oversight bodies need to become thoroughly acquainted with their police organization and its culture but warns, 'They also have to guard against the . . . danger of becoming "co-opted" through overfamiliarity into police ways of thinking' (1991: 194). In a study related to this issue, Maguire used diverse sources to evaluate the PCA's operations. He found little evidence of direct capture of the Authority by police. For example, police investigations supervised by the PCA were more likely to result in disciplinary outcomes (although selection bias may have influenced this). At the same time, there were also very few actively supervised cases, and a survey of complainants found a very high level of dissatisfaction and little faith in the system. 'The vast majority were in favour of investigations being conducted by a totally independent body' (1991: 201). Maguire's conclusion was that supervision 'probably had some "sharpening-up" effect upon investigating officers' (p. 205), but to improve public confidence he recommended a much more interventionist PCA, with more intensive supervision of police investigations, adoption of a lower standard of proof, and maximization of the benefits of conciliation of complaints. A more radical measure is that of complete externalization. This entails the considerable challenge of staffing an agency with non-police investigators, but it has been the preferred option of major inquiry reports internationally, including a recent Australian Law Reform Commission review, that concluded:

> Police investigators, whether consciously or otherwise, will tend to be sceptical of complainants and will be 'softer' on the police concerned . . . The model most likely to engender confidence must be one which gives as much power and responsibility as possible to an external agency. (ALRC 1995: 149)

A Case Study

The preceding section referred to the significance of the Queensland Fitzgerald Inquiry (1989) as the first inquiry in Australia to expose high-level corruption and initiate large-scale reform measures. The report has been a focal point for subsequent inquiries in other jurisdictions, and has also received attention as an important case study in the international literature (Finnane 1991; Goldsmith 1991). A major recommendation concerned the creation of the Criminal Justice Commission (CJC) to investigate complaints and oversee reform. Since its establishment in 1990, the magnitude of the CJC's powers has set it apart from most oversight bodies. The present study explores the relevance of capture theory to the relationship between the CJC and the Queensland Police Service (QPS), with a focus on advancing strategies for improvements where deficiencies are identified. Internationally, external oversight is in the early stages of development. There are lessons to be learnt and translated into new

strategies that need to be tested in turn. The case study contributes to this task by the following means:

– Assessment of the CJC's structure and functions in terms of exposure to capture.
– Review of the management of routine complaints investigations.
– Analysis of significant events capturing media attention or involving detailed CJC reports.

Exposure to Capture

Conditions against capture

The Criminal Justice Act 1989 provides the CJC with substantial powers for carrying out its functions free of undue influence. In relation to implementation of reform, the Act empowers the CJC to 'provide the Commissioner of Police with policy directives' and, more broadly, to take 'such action as the Commission considers to be necessary or desirable in respect of . . . the administration of criminal justice' (s. 2.15). The CJC has authority to conduct hearings on any matter related to its functions and to take evidence in a variety of forms. Misconduct tribunals were provided as a crucial tool for exercising disciplinary control. Tribunal judges have inquisitorial powers, use a civil standard of proof, and have a wide range of sanctions at their disposal. Matters may also be referred to the Public Prosecutor. To facilitate independence, most persons in public employment are barred from membership of the CJC's management committee of Commissioners. A cross-party Parliamentary Committee monitors and reviews the CJC's work and reports to Parliament, but it cannot interfere in investigations.

Conditions favouring capture

An important aspect of the CJC's structure favouring capture is the secondment of Queensland police officers. In 1996–7 police made up 37 per cent of staff, with 92 police working alongside 155 civilians (CJC 1997c: 68). Police were half the staff of the Official Misconduct Division and formed the core of field investigators (CJC 1996a: 3.1). This situation fulfils one of the primary conditions for capture: recruitment of personnel from the regulated body. Secondment has been relied upon despite the Fitzgerald Inquiry finding against police investigating police, and despite a public opinion survey conducted for the CJC showing that 87 per cent of Queenslanders thought complaints 'should be investigated by an independent body, not the police themselves' (CJC 1997b: 47).

An example of exposure to capture through facilitative functions is the CJC's statutory role in fighting organized crime. The Fitzgerald Report argued police had failed to combat organized crime and recommended a role for the CJC in this area. In 1992 a Joint Organized Crime Task Force was established with the QPS. In 1996–7 investigations resulted in 98 charges in 13 criminal cases (CJC 1997c: 53). Additionally, as part of its mission for scientific policy development in criminal justice, the CJC has worked with the QPS on numerous projects aimed at improving police performance. This requires joint committees and staff interaction, and a high degree of good will and cooperation.

Under-resourcing is a potential source of regulatory failure and vulnerability to capture. The CJC has been generally satisfied with its annual allocation of approximately $21m (CJC 1995a). Per annum there have been about 20 complaints, consisting of 43 allegations, for every one operational officer in the Official Misconduct Division (CJC 1997c). This appears manageable. However, in 1996, a major anti-corruption operation—'Shield' (see below)—coincided with a budget cut of 6.5 per cent. The cut made the CJC dependent on extra resources provided by the QPS, including personnel and vehicles (CJC 1997a).

The Complaints Management Process

Processing of complaints is a major obligatory routine task of a police regulatory agency, and quality of investigations and appropriateness of sanctions are essential to operational integrity. Figures indicate the CJC receives an average of 3,000 complaints against police per year (approximately one complaint for every two police officers). The Commission claims that such a large flow reflects confidence in its processes, particularly when compared to the low numbers directed to the preceding predominantly in-house bodies (CJC 1996a, 1997b).

In 1997 the CJC's Research Division published a review of complaints investigations. Problems of incompatibility between CJC and police databases and changes to procedures meant it was impossible to provide a complete table of all case dispositions. On average, however, it was reported that, of allegations of police misconduct reported to the CJC, 30.9 per cent were 'referred to the QPS or other agency for investigation or informal resolution', 27.7 per cent were 'not investigated', and 27.5 per cent were 'not substantiated'. Only 8.6 per cent were 'substantiated' (CJC 1997b: 62). In a separate analysis, the CJC reported on outcomes in terms of the percentage of recommended charges where the officer was found guilty or resigned. A 'guilty' or 'resigned' outcome occurred in 35 per cent of cases where criminal charges were recommended, 50 per cent for 'official misconduct', 74 per cent for 'misconduct', and 78 per cent for 'breach of discipline' (CJC 1997b: 67). Data on the 'final outcomes' in terms of police departmental sanctions against those found guilty were also reported separately up to 1993–4. Data from the last three available years showed the less onerous category of reprimand or counselling was the outcome in 57 per cent of cases. Fines were applied in 14.7 per cent of cases, suspended sanctions in 11.4 per cent, demotions or pay penalties in 4.2 per cent, and dismissed or resigned in 2.5 per cent (CJC 1997b: 68, 121).

In arguing for its effectiveness, the CJC has emphasized that the substantiation rate of 25 per cent for matters investigated is above that of 17 per cent for the Police Complaints Tribunal which operated prior to the Fitzgerald Inquiry. The CJC has also argued that, pre-Fitzgerald, police only laid charges in approximately 33 per cent of substantiated matters referred by the Tribunal. Post-Fitzgerald, over 70 per cent of matters referred by the CJC to the police for misconduct or breaches of discipline resulted in findings of guilt or resignations by officers (CJC 1997b: 66). However, it could be argued that the 8 per cent difference cited for pre- and post-Fitzgerald substantiation rates is not outstanding, particularly in light of Fitzgerald's complete condemnation of the preceding system. Furthermore, the 8.6 per cent overall substantiation rate is at the lower end for those reported in the literature. Nonetheless, it is impossible to make any firm judgement

about effectiveness simply on these figures. The report infers that the real incidence of misconduct may be much higher than investigations are able to identify because of the problem of obtaining sufficient evidence. In regard to the issue of sanctions, it is notable that the majority of reported police departmental sanctions for proven complaints carry a very 'low tariff'—involving reprimands and cautions. Very little use is made of dismissals or fines. This attrition of complaints prompted the journalist whose investigations led to the Fitzgerald Inquiry to describe the CJC as 'a useful repository for burying complaints' (*Good Weekend* 12 August 1995: 26).

In assessing the complaints process, the developing proactivity of the CJC should also be acknowledged. Over 280 recommendations have been made to the QPS for changing procedures to reduce complaints (CJC 1996a). Informal resolution has been introduced as a means of improving efficiency, and to produce more satisfactory outcomes for complainants. The Research Division has initiated analyses of complaints data by type and geographical area in order to develop targeted prevention measures (CJC 1996a). In 1995 the Division published the first regular diagnostic survey on officers' attitudes to ethical issues (CJC 1995b). The CJC also began making greater use of covert operations against police suspected of misconduct and began the groundwork for a targeted integrity testing programme (Homel 1997).

Despite these proactive measures, a significant source of problems in the complaints management process is revealed by the above data showing outcomes of recommended charges. Numerous cases are sent to trial when the higher standard of proof in criminal courts reduces the odds of success down to 35 per cent. The conviction rate for official misconduct matters is higher at 50 per cent. Some of these matters were processed through misconduct tribunals, but very little use is made of tribunals overall. While police disciplinary procedures have a much higher chance of achieving a conviction (or resignation), at an average of 76 per cent of cases, it is ironic that more serious complaints of misconduct are more likely to fail; whereas less serious cases are more likely to succeed because of the lower standard of proof. However, this is complicated by the very 'low tariff' outcomes of police disciplinary processes. In combination, these factors beg the question of the possible under-utilization of tribunals—an average of only five cases have been completed per annum (CJC Annual Reports).

From 1991–2 there was growing concern in the CJC that tribunals were not operating as inquisitorial forums as intended. An 'excessively legalistic' approach led to an unexpected number of dismissals (CJC 1996a: 3.15). A decision was made to circumvent this problem by downgrading official misconduct matters to disciplinary offences and referring them to police for more expeditious processing. Subsequently, concerns developed about delays by police and inadequate penalties dispensed by police. In 1993 a former stipendiary magistrate was employed to review police handling of disciplinary recommendations. Out of 30 charges reviewed, 23 were considered substantiated by the magistrate but only four had been accepted as substantiated by police. The magistrate also found that two of the four cases resulted in inadequate penalties. In 1997 the CJC successfully obtained an amendment to its governing Act to allow it to appeal to misconduct tribunals against police disciplinary decisions. This stand was reinforced in 1996 during a ministerial review of the QPS. In their submissions, the QPS and the Queensland Police Union of Employees argued the QPS should take back more jurisdiction in misconduct matters. The CJC successfully resisted this move, stating bluntly 'The QPS has not yet demonstrated the ability to effectively and impartially investigate

complaints of misconduct against its own members' (CJC 1996a: 3.21). Despite this, the volume of referrals to police has not changed significantly.

Another questionable aspect of the complaints process is the lack of fully developed quality control measures. As noted, there are several hypothetical explanations for the attrition of complaints. These include a high volume of erroneous complaints and inherent problems of evidence. Capture theory provides an alternative explanation, and there do not appear to be sufficient safeguards against capture in the CJC's complaints management system. With police having such a prominent role in investigations, there is a high probability there will be a reluctance to engage in thorough inquiries, and to influence other investigators similarly. Two methods to promote the quality of investigations and guard against police subversion are surveys of complainant satisfaction and independent audits of cases.

In a 1994 study focused on informal resolution, the CJC reported comparative data on complainant satisfaction with formal investigations. The majority of complainants who had their matters formally investigated were dissatisfied on a range of indicators. Of particular note is the fact that 56 per cent felt the investigating officers either 'just went through the motions, making no real effort' (41 per cent) or 'deliberately went out of the way to avoid the truth' (15 per cent). At the same time, only 7.5 per cent stated the investigator tried to persuade them to drop the complaint and 10 per cent said the possibility was mentioned. The latter questions provide a very useful check on attempts to manipulate complainants. Nonetheless, the survey needed to distinguish between police and non-police investigators, and it needed to ask more probing questions about why complainants were dissatisfied. Of additional significance was the fact that conciliation procedures conducted by senior police were viewed positively. For example, of those complainants experiencing informal resolution, 60 per cent were satisfied with the outcome and 76 per cent were satisfied with the way the complaint was handled (CJC 1994c).

Auditing of investigations provides another check on quality. According to the CJC chair incumbent in 1998, 'Maintaining quality control in investigations is a priority for the CJC and checking takes place on an ongoing basis' (letter to the author, 17 February 1998). The nature of this checking was not elaborated upon, but was said to be 'not . . . along the lines of that described in the QPS (Bingham) review'. In its submission to the 1996 Bingham review of the QPS, the CJC cited an audit by a retired Supreme Court Judge of QPS disciplinary investigations. Of 180 investigations, 30 were deemed 'inadequately investigated' (CJC 1996a: 3.23). A protective style of questioning was identified along with failure to follow all potential leads or properly secure physical exhibits. The report is telling in terms of the arguments about the inability of police to investigate colleagues properly and must surely by extension include QPS officers in the CJC—unless otherwise disproved by a similar independent audit.

Major Events and Reports

Operation Shield

In 1993–4, following concerns about police involvement in the drug trade, the CJC launched diverse operations brought together in 1996 as 'Operation Shield'. Traditional investigative techniques were supplemented by covert surveillance, undercover agents,

stings, and formal hearings (CJC 1997a). Although initial results did not yield exposure of senior police as expected, several corrupt networks were broken and criminal convictions obtained. Contrary to a capture hypothesis, the vigour of the investigation was strong testimony to the commitment of the CJC to removing corruption from the QPS, and the report recognized that anti-corruption measures must move beyond complaints processing to be effective. Recommendations included drug and alcohol testing, and creation of a special unit within the CJC to institutionalize the use of 'intelligence driven' strategies to identify and deter the most secretive forms of corruption.

The death of Daniel Yock in police custody

Daniel Yock, an 18-year-old Aborigine, died in police custody in Brisbane in 1993. His death sparked a bloody clash the following day between police and mainly Aboriginal protesters outside police headquarters. Investigative hearings were conducted by a CJC Commissioner. The report (CJC 1994a) appears thorough and objective, concluding there was no evidence supporting any charge of official misconduct in relation to the immediate causes of death. It appeared Yock died from heart failure, resulting from a long-term condition, probably while in the police van en-route to the City Watchhouse. However, the report stepped around the contextual issue of policing practices.

Yock and eight other youths had been drinking alcohol in a park frequented by Aborigines. Two police officers in a van circled the park several times and then followed the group as they walked through neighbouring streets. The CJC report affirmed the youths acted in a disorderly manner that justified the eventual arrest of Yock and one other. However, the investigating Commissioner also conceded the disorderly behaviour was directed at police, was in response to a perception of harassment, and escalated as police followed the group for some time before attempting to arrest them. The two officers conceded there was no intention to make arrests based on the behaviour observed in the park. The Commissioner indicated the general approach taken by police in the area was unproductive and related to the onset of events leading to Yock's death. He also criticized the officers for neglect of duty of care procedures. But it is telling that the report made no mention of the 1991 report of the Royal Commission into Aboriginal Deaths in Custody (Johnston 1991). Reference to the report should have led to a finding of serious failure of police management in the context of the events. The Royal Commission made it clear there was a causal relationship between high numbers of Aboriginal deaths in custody and a narrow law enforcement approach to policing of public drunkenness. In fact the sequence of events in the Yock case displayed a provocative and repressive approach by police. (When one of the officers radioed to a vehicle carrying members of the Public Safety Response Team, he said 'I just thought you might be around 'cause you love that type of stuff' (CJC 1994a: 29).)

The patrol officers should have ignored the group in the park. Failing that, Yock should have been placed under supervision in a purpose-built diversionary centre where he could 'dry out', possibly to be charged with disorderly conduct by summons at a later date in accord with the system prescribed by the Royal Commission. The shorter distance to a diversionary centre after apprehension may have meant that First Aid could have been administered sooner. Had that failed, the different setting may have diffused the profound deterioration in relations between police and Aborigines that followed. Police had failed to initiate the establishment of a diversionary centre despite the problems of

public drunkenness in the area. In default, the CJC should have used its statutory authority to direct police action.

The Pinkenba Six

On a cold night in 1994, six police officers in an inner city area of Brisbane picked up three Aboriginal boys aged 12, 13, and 14. The boys had criminal histories, but on this occasion no charges were laid against them and there was no evidence of a crime being committed. The police left the area without authorization taking the boys in three patrol cars 14 kms to Pinkenba, an industrial suburb with an area of waste land on the outskirts of the city. The boys were abandoned after their shoes were removed and thrown into a lake. Following disclosure, and investigation by the CJC, the Public Prosecutor laid criminal charges against the police of deprivation of liberty, thereby putting the very young boys through the rigours of the adversarial system. Eades' (1995) analysis of the withering cross-examination shows the cultural insensitivity of the entire committal process. The magistrate dismissed the case, alleging the boys were unreliable witnesses. The police defence counsel cynically exploited the trait of 'gratuitous concurrence' in which Indigenous People's concern with politeness requires they agree with a proposition despite their true opinion. After the committal failed, the CJC referred the matter to the police. Deputy Commissioner Aldrich dismissed three officers and

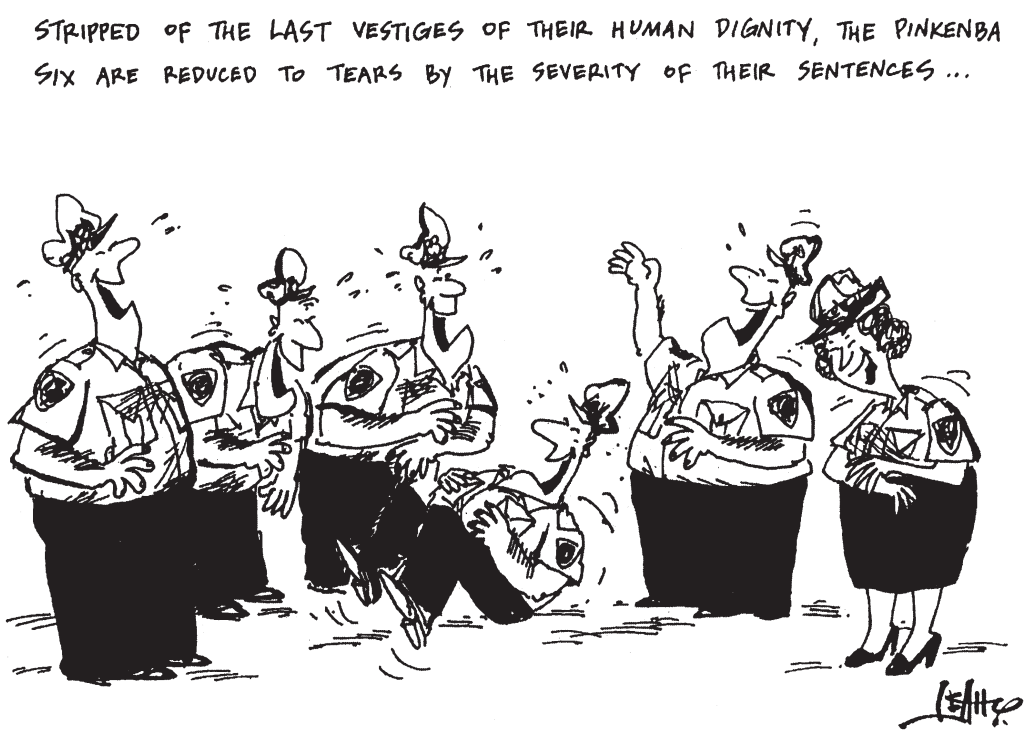

FIG. 1 The Pikenba Six (Source: *Courier Mail* 12 April 1996: 12. Permission granted by Sean Leahy)

demoted four (including the Supervisor). He then suspended the sentences, effectively absolving all seven (*Courier Mail*, 12 April 1996: 3). The CJC's decision to recommend criminal prosecution could be seen as a hard line and part of the case against capture, but criminal proceedings proved too risky. The mistake was compounded by an even worse decision to pass the matter to the police and not take up the option most likely to succeed: an inquisitorial disciplinary hearing by a properly trained tribunal.

The MOU Inquiry

Concerns about inappropriate relations between politicians and sections of the police in Queensland were a recurring theme of the 1989 Fitzgerald Report and these concerns were revived in 1996 following revelations of a secret deal before a critical by-election. The then opposition leaders agreed in a Memorandum of Understanding (MOU) to cut back on CJC oversight of police in return for support from the Queensland Police Union of Employees in the by-election. This was a critical test of the CJC's resolve to maintain reform. A retired out-of-state Supreme Court Judge, Kenneth Carruthers, was appointed to conduct an inquiry with the widest possible terms of reference inclusive of the Fitzgerald reforms. Carruthers engaged in meticulous investigative hearings, and his occasional comments on proceedings indicated adverse findings against the parties. Although Carruthers was independent of the CJC, his appointment and resources reflected well on the Commission's commitment to calling police and politicians to account.

The Union's law-and-order campaign in the by-election helped tip the balance in the opposition's favour. Of the politicians involved in the MOU, one became Premier and one the Police Minister. The new government moved quickly to fulfil an election promise to review the CJC. Carruthers resigned in protest following demands made on his inquiry (into the MOU) by 'the Connolly-Ryan Inquiry' (into the CJC). The CJC handed Carruthers' material to two barristers to finalize within narrowly legal terms pertaining to electoral bribery (CJC 1996b). No adverse findings were made against the politicians. Possible departmental charges against police officers were referred to Police Commissioner O'Sullivan, who claimed there was insufficient evidence for disciplinary charges. The Connolly-Ryan Inquiry was eventually closed down on grounds of ostensible bias by the Supreme Court. But at the time the government appeared to have the upper hand against the CJC. The change in the terms of reference and referral of charges to the police could be interpreted as a capitulation to the police and government, and appears consistent with the concept of 'agency survival' in capture theory.

Reforming the detective culture

The Fitzgerald Inquiry had found corruption to be most acute amongst detectives. Radical measures were recommended to change the detective culture, including training all police in investigation as a general skill, requiring detectives to wear uniforms, breaking up specialist squads, and making most investigations a local responsibility. The CJC's (1994b) evaluation of reform made some positive comments on the break-up of specialist squads, but argued the main recommendations were thoroughly subverted. Nonetheless, none of the CJC's powers to direct police were called upon to

remedy the situation. Two years later, the Bingham (1996) review (which included two CJC Divisional Directors and was chaired by a former CJC Chair) was obliged to make the same judgments.

Senior police contracts

Another Fitzgerald recommendation concerned the introduction of police employment contracts to enhance accountability by destroying a 'job-for-life' mentality that partly underlay inefficiency and corruption. The most explicit comments were focused on the terms of employment of the Commissioner, with 'Provision for termination on the grounds of inefficiency or incompetence evidenced by failure to achieve goals, standards of discipline and performance' (Fitzgerald 1989: 278). The Police Service Administration Act 1990 stipulates a 3–5-year contract for the Commissioner but places the option of open competition at the discretion of the government. Deputy and Assistant Commissioners also became subject to fixed term contracts, with competition at the discretion of the Commissioner. A precedent was set in 1992 when the then Commissioner resigned when a hostile government advertised his position.

In terms of the concept of performance objectives, it is notable that both the CJC (1994b) review of the QPS and the Bingham (1996) review identified major failings in management. Both alleged police had failed in the core mission to reduce crime and adopt more effective policing strategies. The Bingham review used survey data to show professional ethics were deficient, partly as a result of the lack of a coordinated proactive strategy on the part of management. It indicated a serious morale problem, lack of corporate vision, failure to develop professionalism amongst the rank-and-file, and a serious problem with sexual harassment (Bingham 1996). However, when a rash of senior executive contracts neared their expiry dates in 1996, all incumbents had their appointments renewed without competition, including the Commissioner. The government openly committed itself to advertising the positions (*Courier Mail*, 3 September 1996: 4), but the future of six Assistant Commissioners was assured after they marched from Police Headquarters to the Minister's office to meet personally with the Minister. The Minister opted for appeasement, but the CJC also failed to exercise its powers in seeking proper review of the contracts.

Discussion and Recommendations

The findings reported above oblige a mixed assessment of the CJC's oversight of the QPS, but one tending towards the negative. While examples of zealous and proactive approaches to control of police conduct were identified, these were outweighed by examples of indecisiveness, inaction, and a generally weak approach to ensuring adequate detection, punishment, and prevention of misconduct. This is especially evident in cases where detailed reports are available. There is also an apparent failure to utilize inquisitorial administrative processes for dealing with complaints effectively. However, as in Maguire's (1991) study of the Police Complaints Authority, the thesis that poor outcomes are the result of capture by the police cannot be proven beyond reasonable doubt. Nonetheless, on the balance of probabilities, there is evidence for a

form of indirect capture through structural influences. An obvious factor is the major role of seconded police in investigations. This practice should be abandoned on principle because of the potential it creates for compromise. A clearer separation is needed between police and the regulator. For example, the recently created New South Wales Police Integrity Commission, which investigates complaints of serious misconduct, excludes former or serving NSW police from its staff. There should also be regular independent auditing of CJC investigations by a team of experts, and regular probing surveys of complainants (Maguire 1991).

Another structural feature facilitating weakness is the referral of disciplinary matters to police. The inadequacy of this process is evidenced by the CJC's own evaluations. Either the CJC should take over all discipline or constantly audit police decisions and correct managers where deficiencies are found. It is conceded that a model of complete externalization of discipline and investigations has inherent problems. Some form of cut-off is required for minor matters. Additionally, an external agency cannot achieve coverage across an organization in the same way as internal managers who have responsibility for discipline as well as operations (ALRC 1995). There is also the argument, made repeatedly in the British debate (Lambert 1986), that managers may avoid responsibility for discipline through displacement to the external agency—although this can be countered to some extent by using the oversight agency's findings as a form of evaluation of management (Bayley 1995). Another problem is the need for communication between the two organizations. Where maximum external control has been recommended, there is usually a recognition that 'a completely external system is probably illusory because there is always likely to be a need for some degree of liaison and co-operation with the police and for some police filtering of complaints for the external agency to be effective' (ALRC 1995: 149; Goldsmith 1991). The case study found the CJC appeared tougher on police than the pre-Fitzgerald Police Complaints Tribunal, but this was not difficult to do. The CJC appears typical of external agencies generally, other than temporary inquiries, which have not been shown to be dramatically more effective than zealous internal affairs departments. Despite these problems, the dubious alternative of a return to police internal control needs to be rejected in favour of expanding and improving the oversight system (Maguire 1991). Positive findings about informal resolution from complainant surveys indicate this may be a suitable area to expand police involvement.

A notable feature of the Police Integrity Commission recommended by the Royal Commission into the NSW Police Service was that it would have no facilitation or other functions outside police conduct (Wood 1997)—as is the case with the PCA. The CJC's role in assisting in police management, and its work with police against organized crime, have created conditions favourable to adoption of an appeasement strategy. Perceptions of failure in the fight against organized crime led to the creation of a new Queensland Crime Commission in 1998, and this may be a good move in terms of reducing the CJC's tasks. The CJC has recognized the importance of the link between ineffective policing strategies and misconduct. Nonetheless, the statutory position gives the CJC excessive responsibility in broad policy areas; while legislation needs to authorize the CJC explicitly to direct police be demoted or removed from their positions for failing to follow directives. However, as the CJC's acquiescence on the renewal of the senior police contracts shows, application of this mechanism would require a more assertive Commission.

The current shift in CJC policy away from reliance on complaints investigations towards proactive measures such as integrity testing, covert surveillance, ethics surveys

and diagnostic research is highly commendable and instructive for similar agencies (Homel 1997). However, the Commission still appears to be dominated by an organizational culture that is an unwieldy amalgam of traditional policing and legal cultures. It is difficult to provide any one coherent description of this culture. In a brief critique, Woodyatt (1995: 59), a former Research Director of the CJC's Parliamentary Committee, described CJC reports as 'narrow and legalistic, missing opportunities to address systematic problems'. He attributed this in part to lack of coordination between the different sections of the Commission, with the investigative priorities of the Official Misconduct Division dominating. Greater input from the Research Division into investigations should help prevent unproductive reports such as those on the death of Daniel Yock and the MOU. Certainly, at times, the CJC appears overly concerned with prosecutions, and captured by the glamour of high profile investigations. Ironically, this approach favours the accused and very few successful prosecutions are obtained—the cases of the Pinkenba Six and the MOU being revealing examples. At the same time, the Commission appears to be on a learning curve. Importantly, it is developing a capacity for self-evaluation with research instruments—essential in any similar agency—for addressing crucial questions regarding the best means of controlling police conduct and demonstrating effectiveness.

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