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Aboriginal Communities and the Police
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Terror, violence and the abuse of human rights

The liberal view of policing conceives of police actions as contextualised by the rule of law. Police intervention and the use of force are justified both by the legitimacy of such actions in a legal sense and by the political legitimacy of a consensual social order. This model provides little assistance in understanding police functions which rely on extra-legal or illegal actions. This chapter explores the related issues of police violence, terror and the abuse of human rights. I have used a broad concept of violence which includes obvious physical assault as well as the use of terror, torture and ill-treatment. Within the category of violence I also discuss the failure to exercise a level of duty of care The outcomes which arise when police fail to adequately perform their responsibilities, particularly those which arise from a duty of care to persons in their custody, are often disastrous. Many Aboriginal deaths in custody have arisen through failure to exercise a required duty of care. I have termed the results of this failure the 'violence of neglect'.

The following discussion of police violence is contextualised both historically through a consideration of the role of terror in policing Aboriginal communities, and within the contemporary discourses on human rights. I am to draw out the continuities in the use of violence against Indigenous people, while at the same time placing contemporary manifestations of violence and ill-treatment within the context of the abuse of internationally recognised human rights standards.

TERROR AND THE POLITICS OF COLONIALISM

Terror has been a powerful weapon in the history of colonisation (Taussig 1987; Morris 1992). It has been a component of the Australian colonial process from the first days of settlement. The

history of terror, torture and ill-treatment is intimately bound up with the various stages of warfare across the continent as Aboriginal people were dispossessed from their land. Although the punitive expeditions resulting in the indiscriminate murder of Aboriginal people had ended by the 1930s, the use of terror was still an important part of maintaining control and a key policing tactic against 'troublesome' communities and individuals. Terror and violence today remain an important part of the relationship between the criminal justice system and Indigenous people in Australia. There have been many Indigenous voices which have interpreted their experience of police violence within a framework of torture, terror and ill-treatment (HREOC 1991; Cunneen 1991a).

Taussig (1987) has broadened our understanding of the colonial process by arguing for the importance of the role of terror in maintaining a colonial hegemony, while 'officialdom' attempts to create a reality which denies the extent of terror. The official denial of the use of terror, violence and torture has been particularly apparent both historically and in contemporary Australia. Given the widespread incidence of police violence, the level of official denial is sometimes staggering. The extent to which a culture of terror exists enables relations of domination to be deployed through surveillance and violence. Marcus (1991, p. 119) has discussed the way 'the state produces texts on Aboriginal Australians which constitute Aboriginal society as a domain of chaos and a culture of disorder'. The opposite to the construction of Indigenous society as anarchic is the use of terror tactics by state institutions in Indigenous communities.

The ubiquitous nature of terror in the colonial process is only now matched by the continual denial of the history of the use of violence. The culture of denial is akin to the belief in *terra nullius*—the land was 'practically' empty, the country was peacefully 'settled'. Historians like Reynolds have counted the death toll and argue for the need for memorials to commemorate Indigenous people who died defending their country (1995, pp. 209–11). Similarly, the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families stressed the importance of truth and reconciliation as part of the remedy for the gross violation of human rights which occurred with the forced removal of Indigenous children.

Counterbalancing the culture of denial is the historical memory within Indigenous culture. As noted in Chapter 3, the

forced the remaining Aboriginal people to the mission house where they were kept overnight under armed guard. The following day they were placed on the boat. The settlement was burnt to the ground, including the people's houses and remaining possessions, the school, the workshop, butcher shop and the store. People's dogs were shot. One informant recalled being on the boat and watching the settlement in flames before departing to Bamaga and 'New Mapoon'.[1]

The Mapoon story is an example of the use of terror against an Aboriginal community which refused to comply with the wishes of church and government administrators. The use of terror here was undeniably tied to Indigenous resistance. Thus terror is linked, albeit at times tenuously, to governance and in this sense can be thought of as a technique of government. In the Mapoon example, terror was employed in the name of assimilation. Church and government agreed that the interests of Aboriginal people at Mapoon would be best served by their removal from their traditional lands as part of the policy of assimilation. The removal just happened to coincide with the desire to expand bauxite mining leases in the area.

A more recent example of the use of terror against an Aboriginal community which is assertive of its rights is the long-running complaint concerning police tactics in the Swan Valley Nyungah community in Lockridge, Perth. The community itself has struggled over a long period to secure land tenure and develop a community based on the principles of self-determination. The first complaint concerning police raids dates back to December 1989, when the Tactical Response Group armed with shotguns and dressed in flak jackets entered the community. Nyungah people in the campsite were rounded up, some forced from their beds to lie on the ground with firearms pointed at their heads. Eight and 9-year-old girls had firearms pointed at them while they were showering.[2] Over the intervening years there have been numerous complaints concerning police activities in the community. A police raid on 31 January 1996 involved twenty police vehicles, vans and four-wheel-drives arriving unannounced and speeding into the community, which at this time comprised fifteen homes and a population mostly of women and children. Between 40 and 50 police were involved in the operation, including mounted police and police with dogs.[3] Some police were dressed in overalls without identification numbers. The police recovered a stolen wheelbarrow, a 'bong' and a small quantity of cannabis. At the

time of the raid a doctor was making a medical visit to the community. In correspondence to the Minister of Police, she noted that the raid was highly stressful for the people of the community; it was 'both threatening and provocative, more like the oppression expected from a military regime'. Other raids occurred in October 1995, March 1996 and January 1997.

In Queensland the police riot at the Rosalie RSL Hall (Brisbane) on 27 September 1986 provided a stark example of collective police violence at an Aboriginal gathering. Aboriginal people had hired the hall for a dance following a football competition. Large numbers of police built up outside the hall during the course of the evening, despite the fact that there were no incidents reported. Police provocation, including bringing dogs into the hall, sparked a riot during which indiscriminate violence was used against Aboriginal men, women and children. One witness stated:

> Without warning police and police dogs began pouring in the hall . . . I saw about six police dogs with dog handlers . . . All the police had batons in their hands. They marched into the hall and moved across it swinging their batons at the black men, women and children inside the hall. Men, women and children were being kicked and batoned even when they were down on the ground.

Over 70 people were charged with drunkenness, offensive language and resisting arrest. Livingstone Alberts was outside the hall when the riot started and was attacked by several groups of police as he attempted to get away. An ABC film crew captured film of him being batoned from behind around the head, neck and shoulders. He was later kicked while on the ground. One police officer was eventually charged with assault and pleaded guilty. However, the judge dismissed the matter with no conviction recorded against the officer.[4]

Terror and violence against individuals

A number of inquiries, surveys and studies in the 1990s considered the issue of police violence against Indigenous people. While these studies utilise various methodologies and lack a common definition of what constitutes police violence, taken together they indicate the extensive nature of police use of violence and the high levels of intervention by police.[5] For example, the Australian Bureau of Statistics (ABS 1995) national Aboriginal and Torres

first related to the policing of public space and the contest which occurs over the use of such space. The second related to violence which occurs in police stations and lock-ups, primarily to do with gaining admissions from individuals who had been arrested, but also often including a routine form of summary 'punishment'. Not all forms of police violence in public directly related to the establishment or confirmation of police authority, as unprovoked violence and harassment by police officers occurred without any overt challenge to their authority. Similarly, violence in the police station or lock-up sometimes occurred without any directly instrumental link to gaining an admission from the alleged offender, although, in most cases the violence did have an instrumental purpose. Less than 10 per cent of the Indigenous young people interviewed recollected making any form of complaint about the incidents of violence. In the majority of cases there was simply seen to be 'no point'. The nature of the few complaints which were made was ambiguous and did not necessarily involve the lodging of a formal police complaint.

The data from surveys and inquiries, in particular the National Inquiry into Racist Violence, confirms the experiences of Aboriginal people recounted in various recent case studies and interviews with Indigenous organisations (Cunneen and McDonald 1997a). What has become known as the Pinkenba Incident provides another well-documented case study on the use of terror and violence against Indigenous people. Three Aboriginal children, aged 12, 13 and 14, were detained by six police officers in a shopping mall in Fortitude Valley, Brisbane, some time after midnight on 10 May 1994. There was no evidence they had committed any offence at the time they were detained. The boys were never charged with any criminal matter and were never taken to a police station (Eades 1995a, p. 10). Instead they were driven about fourteen kilometres away to an industrial wasteland and swamp in Pinkenba in three police cars. According to a police spokesperson, the young people were 'taken down to Pinkenba to reflect on their misdemeanours' (ABC *Four Corners*, 18 March 1996).

The three boys claimed that they were terrorised by six police officers on the banks of a creek, that they were told to take their clothes and shoes off and that they were going to be thrown in the creek. They also claimed that police threatened to cut off their fingers. Finally the six police drove off and left the children to find their way back to Fortitude Valley at around 4 o'clock in the morning.

The police officers were charged with unlawfully depriving the three Aboriginal young people of their liberty. When the case came to court there were complaints about the way the hearing was conducted. The children were visibly upset in the witness box, with the youngest child crying. A taped recording of the proceedings reveals the extent to which the children were badgered and harangued by the counsel representing the six police officers. On at least three occasions the magistrate hearing the case against the police referred to the Aboriginal witnesses as the 'defendants', although it was (ostensibly) the police officers who were charged with committing a crime. According to Eades, the 'proceedings in the magistrate's court amounted to an obscene travesty of justice' (Eades 1995a, p. 11). The magistrate found that the police officers had no case to answer because there was no evidence that the children were held against their will—although there was no dispute that they had been placed in the police cars, driven to Pinkenba and 'dumped' there. The Queensland Supreme Court upheld the magistrate's decision in March 1996.

Part of the reasoning for the magistrate's decision rested on the experience and character of the three Aboriginal boys. The result was a finding about their character and behaviour which rationalised and excused the criminal behaviour of the six police officers. The magistrate noted the following:

> The three complainant children have more knowledge as to their rights in relation to the police than the ordinary child in the street, and in many respects they have more knowledge than many of our adult community members. They have admitted knowing the contents of a card issued by the Aboriginal Legal Service. As well as that, they know the Court system well, having kept the Court and legal representatives occupied on many occasions. In fact C. has three pages of previous history and he was the youngest of the trio. All three of them by their history and their own testimony have no regard for members of the community, their property or even the justice system.[7]

The Pinkenba incident crystallises issues in relation to police terror and violence against Indigenous people. It reflects the contemporary use of terror as a police tactic of control over what are perceived to be dissident and troublesome groups of Indigenous people—in this case young people in public places. However,

person has committed or is suspected of having committed; or

(iii) intimidating or coercing the person or a third person

(b) for any reason based on discrimination of any kind.

A significant limitation of the legislation is that it only applies to acts committed by Australians outside Australia (section 6(1)(a)).

Amnesty International (1984, p. 13) has noted that the main definitional elements contained in the term 'torture' are the severity of mental or physical pain or suffering caused to the victim, the deliberateness of the act, and the involvement of state officials in the act. Amnesty also noted that there has not been a clear definition of precisely what is meant by 'cruel, inhuman or degrading punishment'. Torture is a form of ill-treatment which is aggravated and deliberate. There is thus a 'grey area' between actions which might constitute 'torture' and actions which constitute 'ill-treatment'.

Amnesty International's discussion on the nature of torture is relevant to the situation of Aboriginal and Torres Strait Islander people. It notes that torture is essentially a state activity which may play an integral role in the political system itself. It is not only used 'to generate confessions and information from citizens believed to oppose the government; it is also used to deter others from expressing opposition' (Amnesty International 1975, p. 22). Benfeldt-Zachrisson has also noted that while the purpose of torture may partially appear to be information, 'the specific purpose served by such brutality seems to be primarily the destruction of the individual in his/her most basic humanity, while the general objective seems to be the attempt to prevent dissidence—a way of exercising and maintaining power by terror' (Benfeldt-Zachrisson 1985, p. 340).

According to Amnesty International, the subjects of torture are those believed to threaten the established order and who are 'placed in a category that puts them beyond the pale . . . The use of torture is an element in the process of exorcising evil from a society. A community under stress needs a scapegoat to confess responsibility for the evils besetting the society' (1975, p. 32). The constant linking of Indigenous people with criminality and disorder isolates them from the mainstream of the nation, and positions them as an evil social element. It places them in a structural position which provides legitimation for the use of extreme measures of force.

The literature suggests that suicide is 'not an uncommon result of torture, either in prison to avoid further pain or after release due to the oppressive suffering that persists' (Reid and Strong 1987, p. 54). The effects of torture are seen in both family life and social life, where psychological disorders may manifest themselves through a range of abnormal behaviours. Reid and Strong note that identifying torture and ill-treatment is emotive and almost any discussion is likely to provoke charges of bias and prejudice. They observe that victims are likely to have a fear of making any disclosures because of potential repercussions and that torture, by its nature, is usually secretive and therefore difficult to document. They also indicate that for female victims of state violence a common experience is the use of rape, and note that the effects on children, who may either be subjected to ill-treatment or witness torture, are particularly profound.

Is there any evidence that torture occurs in Australia? The possibility of Australian police officers being engaged in the use of torture is not a novel proposition. An inquiry by the NSW Ombudsman into complaints against a police SWOS officer revealed that the tactics used by the officer in a mock interrogation of a 'terrorist suspect' (who was a female police officer) breached the United Nations convention on treatment of prisoners of war, the Commonwealth legislation on torture and constituted assault under the criminal law (Landa 1989, pp. 17–18).

There have been many Indigenous voices that have reported police violence within a framework of torture and ill-treatment. The research into Indigenous young people and allegations of police violence is replete with such stories (Cunneen 1991a). For instance, a 16-year-old youth taken to a Perth police station for questioning initially refused to answer questions. He stated that the police said to him, 'If you don't talk we're going to do something really bad to you'. He alleged that he was assaulted and later stripped to his underpants—in mid-winter—and left in a room with the air-conditioning set to the lowest temperature. He eventually made a statement in relation to offences for break and enter, car theft, assault and malicious damage. He alleged he knew nothing of the offences, but commented 'they were torturing me' (Cunneen 1991a, p. 23). The violence was often premeditated. For instance, a 15-year-old Aboriginal youth in Brisbane alleged he was brought to a police station, taken to a room and handcuffed to a chair with rollers on the base. He was then pushed around the room and punched by two police officers.

suppression of dissidence and the maintenance of power through the use of terror.

In the broader scheme of colonial relations, terror has always had a place in maintaining dominance over the colonised, while the actual police benefit in traditional terms from such raids is often quite small. In the Gundy raid an innocent man died and there was no new information gathered on the person the police were seeking to apprehend. Despite the involvement of 135 police, the Redfern raid, which received legitimation as primarily a 'drug' operation, netted only one charge for the possession of an implement for the use of drugs—the police confiscated two 'bongs' (Cunneen 1990a, p. 21).

A further factor with political ramifications is that raids such as the Redfern raid and the one which resulted in David Gundy's death were illegal. The Royal Commission report into the death of David Gundy found that he was killed during an 'unlawful police raid on his home . . . Police had no legal right to be in his home at all, much less to point a loaded and cocked shotgun at him' (Wootten 1991b, p. 1). Police instructions, SWOS instructions and legal requirements were ignored in the conduct of the raid. The search warrants were illegally obtained and illegally executed—David Gundy was killed in the conduct of an illegal police raid. The Redfern raid was the subject of highly critical comments in investigations by the Human Rights and Equal Opportunity Commission (Cunneen 1990a) and the NSW Office of the Ombudsman (1991). In terms of the legality or otherwise of the raid, Finlay J in the NSW Supreme Court found that four of the seven search warrants used were invalid; another warrant was found valid 'but not without some reservations'; the two remaining warrants were valid, but police raided the wrong houses.[11]

Along with the political effects, the medical and psychological effects of such raids on Aboriginal people have been profound. The NSW Office of the Ombudsman received substantial medical and psychological evidence on the effects of the Redfern police raid, which were still obvious some twelve months after the event. These effects were particularly pronounced on young children who were occupants of the houses which were raided, and were commented upon by Aboriginal health workers, pre-school teachers and child psychiatrists (NSW Office of the Ombudsman 1991, pp. 50–1).

One house raided by the TRG and other police in Redfern in February 1990 contained a husband and wife and five children aged 16, 11, 6 and 2 years and a 5-month-old baby. The suspect

for whom the police were searching was not in the house and in fact had already reported to police in Wagga. Twelve months after the raid the mother of the children wrote to the Ombudsman, saying that the family relived the raid every time they heard a police siren at night. 'Charlie, my youngest son lays in the bed screaming and wetting himself in fear. Kimberley stands in the cot screaming with her arms out for me to pick her up. The children are in fear of the raid re-occurring' (NSW Office of the Ombudsman 1991, p. 59). A child and family psychiatrist had been treating the family for twelve months. In a report to the Ombudsman, she stated that the 3-year-old had become 'aggressive with peers, demanding of the mother, [suffering from] night bed-wetting and hyper-reactive of stimuli suggestive of police'. Two older boys 'speak frequently together about the raid and question the likelihood of a recurrence'. One was 'formerly a problem-free child whose school reports have always been good . . . in the 1990 end-of-year report [he is described] for the first time in negative terms'. In relation to the mother, the psychiatrist stated that 'I have no doubt that the stresses and problems I have described above have derived from the raid of February 8, 1990, experienced as considerable terror' (NSW Office of the Ombudsman 1991, pp. 59–60).

In another Redfern house raided by the TRG was a young woman, her 6-year-old son and 6-month-old baby. The person for whom the police were searching did not live at the address. The occupant told the Ombudsman that the raid was stressful and dehumanising. She told of being traumatised by more recent police presence in Redfern. A health worker provided a report to the Ombudsman's Office which detailed the woman's symptoms as 'constant apprehension, a foreboding that the raid would be repeated, general nervousness and difficulty coping with the children and a sense of pent-up anger with herself and members of her family'. She was diagnosed as 'suffering from an acute reaction to stress—Post Traumatic Stress Syndrome'. She was recommended for treatment to the Centre for Victims of Torture and Trauma run by the NSW Health Department (NSW Office of the Ombudsman 1991, pp. 50–1). The Centre for Victims of Torture and Trauma was established to deal with people coming to Australia who had been the victims of torture and terror in foreign countries. It is highly significant that the first Australian-born person recommended to use the centre should be an

Deaths in custody since the Royal Commission

Deaths in custody have continued since the finalisation of the Royal Commission into Aboriginal Deaths in Custody, many of them occurring in situations which the Royal Commission has identified as requiring change. For instance, in October 1990 Craig Sandy was arrested for drunkenness and placed in Mornington Island watch-house, where he later died. The coronial inquiry found that Sandy was unlawfully placed in police custody at the time of his death. Queensland Police Instructions were not properly complied with and the watch-house itself did not provide a safe custodial environment.[13] A more recent death in 1996 in the police lock-up on Bathurst Island, Northern Territory, reflected a similar disregard for Royal Commission recommendations. There was no sobering-up shelter and the man who died was placed in the lock-up without supervision. The death of Phyliss May in Macquarie Fields police station in Sydney's south-west in 1992 similarly reflected a failure to provide supervision in an environment where suicide was a possibility. The Coroner found that the custodial care was substandard.

The most extensive examination of deaths in custody since the Royal Commission into Aboriginal Deaths in Custody has been prepared by the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner (1996). It examined 96 Indigenous deaths in custody during the period 1989–96 and used the findings of coronial inquests as a means of auditing the implementation of Royal Commission recommendations. The report found that the average number of Indigenous deaths in custody during the Royal Commission period was 10.4 per annum, while in the post-Royal Commission period it was 11.4. The location of deaths had changed from being primarily in police custody (two-thirds of the total) during the Royal Commission period to occurring primarily in prison during the later period (two-thirds of the total).

The report found that in all of the sixteen deaths in police cells or police vans there were numerous breaches of Royal Commission recommendations, including lack of proper assessment procedures; lack of protocols for dealing with intoxicated persons; insufficient training to distinguish intoxication from injuries; irregular cell observations and lack of Aboriginal visitor programs (Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner 1996, pp. 53–96). In at least two of these deaths it has been suggested that police were open to being

sued for false imprisonment. In one case a woman was removed from her home, placed in a police truck and charged with public drunkenness. In the other case a woman suffering from a heart attack was assumed to be drunk. She was arrested and placed in the police lock-up where she died (Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner 1996, p. 291).

A 1997 report by Amnesty International sums up ongoing concerns with Indigenous deaths in custody, noting that Indigenous people 'are still dying in prison and police custody at high levels, sometimes in circumstances which Amnesty International believes may have amounted to cruel, inhuman or degrading treatment' (Amnesty International 1997a, p. 1).

THE ABUSE OF HUMAN RIGHTS

There is widespread and consistent evidence of police violence and ill-treatment of Indigenous people throughout Australia, a level of violence which is hardly surprising when placed in the historical perspective of the colonial process. The role of terror in the colonial process also provides a conceptual framework for considering contemporary manifestations of violence. Terror continues to be deployed as a technique of governance. The consequences of terror for Indigenous people can be profound, ranging from personal humiliation to psychological trauma, from wrongful imprisonment for years to physical injury and death. Terror also has an apparently benign face—the violence of indifference and neglect. For many Indigenous people, indifference to their welfare by those required to exercise a duty of care has proved to be equally as disastrous (even fatal) as a police paramilitary raid.

The two general situational factors surrounding police violence against Indigenous people are the policing of public places and the police interrogation process. One can argue that there is a certain instrumentality in the use of violence by police in these situations when it is used to achieve certain identifiable ends. Often Indigenous people state that they view police violence as 'normal'. This should alert us to the fact that violence may be a more or less accepted work practice, neither marginal nor exceptional. In this sense the use of violence can be related to the central tasks of policing: the maintenance of order and gaining convictions. Yet the experience of Indigenous people with the police is qualitatively different from that of non-Indigenous