

## POLICY AND GOVERNANCE

**W** hat can corruption and anti-corruption theory tell us about the problems facing policing in remote indigenous communities?

**08-02** Kirsten Storry

CRAWFORD SCHOOL of Economics and Government  
THE AUSTRALIAN NATIONAL UNIVERSITY

---

<http://www.crawford.anu.edu.au>

© Kirsten Storry

The Policy and Governance Program at the Crawford School of Economics and Government publishes a series of Discussion Papers on a range of policy issues, including issues of political institutions and institutional design, accountability and public sector management, and the relationship between political and economic reform. The Discussion Papers disseminate research quickly in order to generate comments and suggestions for revision or improvement. Since they often represent preliminary or incomplete work, citation and use of such a paper should take account of its provisional character.

The opinions contained in the series are those of the authors, and not those of the Crawford School of Economics and Government at The Australian National University.

---

Kirsten Storry is a Master of Public Policy student at the Crawford School of Economics and Government at ANU and a Visiting Fellow at the Centre for Independent Studies. This paper was written for a Masters course on corruption and anti-corruption and does not necessarily reflect the views of the Centre for Independent Studies.

### **Abstract**

Corruption and anti-corruption theory has already been applied to the problems of policing in a multicultural society in Britain and Australia. What can it tell us about the problems facing policing in Australia's remote indigenous communities? There are various conceptions of corruption in the literature and legislation, but there is a strong argument that over and under policing in remote communities is grey area conduct that could constitute police corruption. Anti-corruption theory can be applied to over and under policing to help us diagnose the problem and work towards a treatment program, but it will not provide a 'one size fits all' cure.

## **Introduction**

In the past two decades, Australian State and Territory Governments have faced media and public scrutiny over revelations of corruption in policing. The Queensland Government responded with the Fitzgerald Commission of Inquiry in Queensland in the 1980s and the New South Wales Government followed with the Wood Royal Commission in the 1990s (Fitzgerald 1989; Wood 1997). The propriety of police conduct towards indigenous offenders received particular scrutiny from the Royal Commission into Aboriginal Deaths in Custody (Johnston 1991).

In 2007, the integrity of police conduct in Queensland's remote indigenous communities hit the front pages of newspapers across Australia. The coronial inquiry into the 2004 death in custody of Mulrunji (Cameron) Doomadgee in a Palm Island police cell made adverse findings about the conduct of Senior Sergeant Chris Hurley, but the state's Director of Public Prosecutions decided that there was insufficient evidence to prosecute him. Although Hurley was eventually prosecuted and found not guilty in October, this high profile episode resulted in the Crime and Misconduct Commission's current inquiry into policing in indigenous communities that is due to report in early 2008 (Crime and Misconduct Commission 2007).

For policymakers who are interested in the relationship between theory and practice, developments such as these raise the question of how useful corruption and anti-corruption theory is in understanding and remedying the problems facing policing in remote indigenous communities. Corruption and anti-corruption theory has already been applied to the problems of policing in a multicultural society in Britain (Macpherson 1999) and closer to home in New South Wales (Chan 1997). This paper now applies this theory to the problems of policing in the approximately 1,200 remote indigenous communities across Australia.

Corruption is often spoken of as a disease (Larmour 2006; Mulgan 2006) and this paper argues that we must exercise care in drawing on the anti-corruption literature on to help to 'diagnose' and find a 'cure' for the malady of substandard policing in remote indigenous communities. This paper first examines the meaning of

'corruption' in the policing context and identifies a gap between the 'modern conception' in the literature and notions of corruption and misconduct in state and territory legislation in Australia. It briefly outlines the maladies of over policing and under policing which appear to afflict remote indigenous communities and examines how well these maladies fit with the various notions of corruption. Finally, this paper examines what anti-corruption theory has to offer by way of remedy if these maladies are diagnosed as forms of corruption.

### **What does 'corruption' mean in Australian policing?**

Before delving into the definitional disputes in the large theoretical literature on corruption, it is worth noting that the basic meaning of the term is fairly straightforward. It involves departure from a 'naturally sound condition' into a condition that is 'unsound, impure, debased, infected, tainted, adulterated, depraved, perverted' (Philp 1997, p. 445). Applying this definition to the real world is not so straightforward because there is no consensus on the naturally sound condition of policing (see Philp 1997). This is particularly problematic for street officers, who have a great deal of discretion in the exercise of their powers, as it is too unwieldy to create rules about how this discretion should be exercised in every situation.

This is not to say that the literal definition is obsolete. The notion of departure from the ideal has filtered through into the 'modern conception' of corruption in the public administration and political science literature. Many of the definitions that fit with the modern conception of corruption revolve around two notions: moral deviation and private interest. Warren, for example, defines corruption as 'individual departures from rules and norms of public office for reasons of private gain (Warren 2004, p. 330). Similarly, Nye defines corruption as 'behavior which deviates from the formal duties of a public role because of private regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private regarding influence' (quoted in Philp 1997, p. 440). Mulgan emphatically rules out any debate that corruption involves 'the improper or illegitimate pursuit of self-interest or sectional advantage'. It is, he says, best understood as 'the *excessive* pursuit of private interest, not the pursuit of private interest *per se*' (Mulgan 2006, pp. 1-2).

In the literature on corruption in policing, the standard is set still higher: either moral deviation or self-interest alone might be considered sufficient to constitute corruption. Kleinig, for example, defines police corruption as ‘when, in exercising or failing to exercise their authority, they act with the primary intention of furthering private or departmental/divisional advantage’ (Loree 2005, p. 5; Newburn 1999, p. 7). Indeed, Mulgan argues that the police form an exception to his earlier rule. The police are one arm of government, he says, that needs to be ‘held to higher, more idealistic standards’ and should not be allowed any leeway for ‘preferring their own interests to those of the community as a whole’ (Mulgan 2006, pp. 2-3).

Based on a survey of the literature, Loree made a significant contribution by paring down the various conceptions he found to five core ideas:

1. the abuse or misuse of position or power for gain
2. breach of public trust
3. personal profit and/or group or organizational gain
4. an inappropriate relationship between at least two positions, and
5. acts forbidden by law, rule, regulation, or ethical standard (2005, pp. 3-4).

Significantly, these are not treated as mutually exclusive forms of corruption in the literature, but are often combined by theorists in various ways to form overarching definitions.

In Australia, it is probably Loree’s fifth element – in essence, departures from rules and norms – that has gained most traction with commissions of inquiry and legislatures over the last two decades. In that time, two high profile commissions have grappled with the definition of corruption: the Fitzgerald Commission of Inquiry in Queensland in 1989 and the Wood Royal Commission in New South Wales in 1997. One of the key similarities between the definitions – and a key departure from the modern conception of corruption – is that Fitzgerald and Wood concluded that police conduct can be corrupt even if not motivated by private gain.

The Fitzgerald Commission of Inquiry did not develop a unifying definition but pointed instead to two main types of police misconduct: ‘verballing’ and ‘corruption’ (Fitzgerald 1989, pp. 206-8). Verballing generally involved falsifying or otherwise

interfering with evidence to convict a defendant, whom the police considered guilty. Verballing, according to Fitzgerald, flowed from police dissatisfaction with the results of the criminal justice system and frustration with bureaucratic red tape and did not involve private gain for the officers. Verballing corresponds closely with the fifth element since it involves contravention of rules, laws and ethical standards. Corruption, on the other hand, was the term that Fitzgerald used for conduct that involved officers taking advantage of the 'opportunities which arise in the course of their duties' for private gain. It corresponded with Loree's first element and included activities like bribery or theft of seized assets.

The Wood Royal Commission, in contrast, adopted an overarching definition of corruption as:

deliberate unlawful conduct (whether by act or omission) on the part of a member of the Police Service, utilising his or her position, whether on or off duty, and the exercise of police powers in bad faith'. (1997, p. 20)

Wood's report makes it clear that these are not alternatives – the conduct must be unlawful and a misuse of office and *mala fide* to be considered corrupt. Wood also noted that, when assessing whether conduct is corrupt, it is not relevant to consider whether or not it was motivated by private gain or whether or not it was successful (1997, p. 20). What differentiated this definition from others in the literature and the legislative definitions, which this paper will now consider, was that the conduct had to be unlawful and the wrongdoing conscious to constitute corruption. This provided clear parameters to the meaning of corruption using the well understood concepts of unlawfulness and intent.

Policing is a matter for the States and Territories in Australia and, in recent years, parliaments in various jurisdictions have also sought to clarify the meaning of 'corruption' and the more commonly used concept of 'misconduct' by introducing legislation or amendments. The New South Wales legislation relates to 'corrupt conduct', while the Queensland, Victorian and Western Australian legislation relate to 'police misconduct', 'misconduct' and 'serious misconduct' respectively.<sup>1</sup>

---

<sup>1</sup> These include the *Independent Commission Against Corruption Act 1988* (NSW) in which section 8 defines 'corrupt conduct'; *Crime and Misconduct Act 2001* (Qld) in which schedule 2 defines 'police

Five elements recur in the definitions and these elements relate primarily to the breach of the social contract between the public and the police as office holders with special powers:

- Breach of public trust (New South Wales and Western Australia)
- Exercise of official functions or powers that is dishonest, partial or in bad faith (New South Wales, Western Australia, and Victoria)
- Misuse of information acquired in the course of official functions (New South Wales and Western Australia)
- Conduct that is disgraceful, improper or unbecoming a police officer, conduct that does not meet reasonable community expectations of a police officer, or conduct that brings the police service into disrepute (Queensland and Victoria), and
- Deliberate or serious unlawful conduct (Victoria and Western Australia).

The definition in Western Australia is somewhat of a pastiche and, in addition to a number of the elements above, includes three forms of corruption that are familiar from the literature but do not feature in the other jurisdictions' definitions:

- Abuse of authority for private gain
- Abuse of authority to cause detriment to another, and
- Acting contrary to the public interest.

Again, it is the departure from rules and norms – the fifth element in Loree's list – that is the focus of the definitions set down by Australian legislatures. Western Australia is the only jurisdiction to include Loree's first element – abuse of office or power for private gain – and then only as a separate form of corruption, not as an essential element of all corrupt conduct. In effect, this departs from the modern conception of corruption in the literature but mirrors the Fitzgerald and Wood definitions which do not require the presence of a profit motive.

What then do these expanded conceptions of corruption mean for real world police practice? There are, of course, acts of 'hard-core corruption' that we can all agree are

---

misconduct'; *Police Regulation Act 1958* (Vic) in which section 86A defines 'serious misconduct'; and, *Corruption and Crime Commission Act 2003* (WA) in which section 4 defines 'misconduct'.

corrupt, such as bribery or evidence tampering (Mulgan 2006, p. 2). The term 'corruption' has, however, been used to describe a wide range of policing activities that encompasses greyer areas like racism or favouritism (see Newburn 1999, p. 4). Where do the parameters of corruption lie?

In the Australian policing context, a wider range of conduct now falls within the definition of corruption or misconduct than would usually be considered corrupt in the literature. The normative system by which conduct is judged is not limited to the criminal law but extends to community expectations of the police. As the argument goes, there is a special social contract between the public and the police: the police are charged to serve society and society, in return, gives them extraordinary powers, such as the power to stop and detain, to arrest and to use deadly force (Loree 2005, p. 2). Society therefore holds police to a high standard of conduct and does not tolerate substandard behaviour, be it for profit or to achieve a personal sense of justice.

What are the implications of this expansion of the definition beyond 'hard-core corruption' to conduct that we might perhaps call 'soft corruption'? The notion that police conduct may be 'borderline legal behaviour' (Lascoumes quoted in Acosta 2003, p. 17) or even strictly lawful, and yet fall within this expanded conception of corruption, is a difficult one to reconcile with our increasingly codified society. The ethical standards by which police are judged can be highly contextual and fluid, varying with the times and circumstances, and there is no 'standard for identifying the naturally sound condition' from which corrupt police officers depart (Philip 1997, p. 445). This results in the dilemma for police that corruption has become 'synonymous with deviation, without a clear definition of the standard by which the behaviour is evaluated' (Lascoumes quoted in Acosta 2003, p. 17).

### **The problems of over and under policing in remote indigenous communities**

In order to examine how the maladies of policing in remote indigenous communities fit within the corruption matrix, it is necessary to explore some background. Across Australia at the time of the 2001 census, there were around 120,000 Aboriginal and Torres Strait Islander people living in roughly 1,200 remote communities and around

800 of these communities had fewer than 50 people. To this day, many of the small communities and even the large communities do not have a resident or proximate police presence.

In 2006, the then Federal Minister for Indigenous Affairs Mal Brough appointed John Valentin, former Deputy Commissioner of the Northern Territory Police, to carry out an independent national audit. Valentin reported in March 2007. The purpose of the audit was ‘to assess and report on the issues and priorities in policing remote indigenous communities’ in order to ‘inform the development and implementation of measures to address those issues’ (Valentin 2007). This was the first time that the problems facing policing in remote indigenous communities had been examined on a national scale. Region-specific inquiries – such as those in Cape York (Fitzgerald 2001), Palm Island (McDougall 2006; Palm Island Select Committee 2005) and the Anangu Pitjantjatjara Yankunytjatjara Lands (Aboriginal Lands Task Force 2007) – had identified some of the issues on a smaller scale.

The Valentin review determined that there was one police officer for every 216 remote community residents in South Australia, one for every 271 remote community residents in Queensland, one for every 311 remote community residents in the Northern Territory, and one for every 172 remote community residents in Western Australia (2007, p. 8). On the raw figures alone, this represented a higher ratio of police to residents than across the jurisdictions generally, as much as twice the number of police per resident in Queensland and South Australia and three times the number in Western Australia. The Northern Territory is the exception.

Nevertheless, the Valentin review noted that many communities did not have a resident police presence at all, one officer could be spread across several communities, and there was very limited capacity for backup and overlap when needed. In Queensland, for example, large indigenous communities like Badu Island, Mornington Island and Bamaga did not have a police presence and many of the Torres Strait Islands did not have a police presence within 75 kilometres of the community. Similarly in the Northern Territory, large communities like Galiwinku, Numbulwar, Utopia and Miligimbi did not have a police presence in the community or within 75 kilometres of it.

Are remote indigenous communities being over policed, as the high police per resident ratio might suggest? Or are they being under policed, as the lack of police presence in many communities might suggest? Sadly, what the report could not tell us was how effective the current policing arrangements were in the various communities because the data deficiencies were too great (Valentin 2007, p. 3). The data on crime or other 'indicators of community dysfunction' was not complete or consistent across the jurisdictions, so the review was only able to map the 'demand' for police services based on community population, not community crime rates. With only patchy evidence of 'over policing' or 'under policing' in remote communities, we are left to build a picture of policing in these communities with anecdotal evidence.

Let us first consider over policing. Over policing refers to a pattern of police suspecting, questioning or arresting indigenous offenders more than would otherwise be expected. The usual example given is arresting indigenous offenders for public order offences that may not otherwise be policed (for example Cunneen 1992; Johnston 1991).

The arrest of Doomadgee for a public nuisance offence on Palm Island is a recent high profile example of over policing. When a public meeting later heard of the horrific nature of his fatal injuries in the Palm Island police watch cell, the ensuing riot resulted in the destruction of the police station. The rioting, though unacceptable, did not warrant the police response it received when the Queensland Government dispatched 30 mainland riot police to Palm Island. There were varied reports of police misconduct, including armed and hooded police bursting into houses occupied by women and children in the middle of the night, with the result that the Crime and Misconduct Commission investigated (Boe 2005).

In remote indigenous communities, arrests of indigenous offenders are far out of proportion to population size. In the Northern Territory in 2005/06 reporting year, in Katherine and the Northern Operational Service Area, more than 6,000 indigenous people were arrested compared with just over 100 non-indigenous; in Alice Springs and the Southern Operational Service Area, more than 7,000 indigenous people were

arrested compared with fewer than 200 non-indigenous people (Northern Territory Police Fire and Emergency Services 2006). Historically, we know that the introduction of mandatory sentencing regimes in the Northern Territory and Western Australia had a disproportionate effect on indigenous people, despite the governments' claim that the laws were not racially discriminatory (Neill 2002 chapter 6).

That said, it is also worth noting that higher arrest and imprisonment rates among indigenous people are not conclusive proof of over policing. Recent research in New South Wales indicates that indigenous people are more likely to be imprisoned because they are more likely than the average to be convicted of a violent crime and also more likely to re-offend, particularly if the sanction imposed is intended as an alternative to imprisonment (Snowball & Weatherburn 2006). Further recent research indicates that indigenous people are more likely to be charged or imprisoned because they are more likely to have risk increasing attributes, such as substance abuse or high risk alcohol consumption, and less likely to have risk reducing attributes, such as a Year 12 education (Weatherburn et al. 2006).

Let us now consider under policing. Under policing refers to the failure to provide the level of policing for indigenous communities and victims of crime that would otherwise be expected. In Queensland, the Cape York Justice Study found evidence to suggest that communities desire police assistance in dealing with serious conflict and feel that policing practices and resources are inadequate (Fitzgerald 2001). A police consultation report for the Justice Study revealed that, because offences such as murder, rape and serious assault occur so frequently in communities, police deem lesser offences 'that would provoke a prompt response in other communities' to be not sufficiently serious to warrant intervention or they go undetected (Fitzgerald 2001). A submission from the Hope Vale community on the eastern Cape pleaded that it 'desperately' needed 'white police, 24 hours a day, to stop the lawlessness' (Fitzgerald 2001).

Under policing of domestic violence and sexual abuse of indigenous women and children has only begun to receive significant attention in the last decade, before which anecdotal evidence suggests that it was often hushed up for fear of promoting

stereotypes of the offenders, who are mostly indigenous men (Neill 2002; Nowra 2007). In the 1990s, it was sections of the media – such as Tony Koch for the Courier Mail and Rosemary Neill for the Australian – that made the major forays into this topic (see Neill 2002). Since 1999, violence and abuse in indigenous communities has now been the subject of some 40 reports across Australia. Among these reports were the Women’s Taskforce report in Queensland (Robertson 2000), the ‘Putting the Picture Together’ report in Western Australia (Gordon et al. 2002), the ‘Breaking the Silence’ report in New South Wales (NSW Aboriginal Child Sexual Assault Taskforce 2006), and the ‘Little Children are Sacred’ report in the Northern Territory (Wild & Anderson 2007). In 2006, Suzanne Smith and Tony Jones for the ABC’s Lateline put the issue back on the front pages with a graphic and disturbing interview with Northern Territory Crown Prosecutor Nanette Rogers on the extent of child sexual abuse in central Australia (Jones 2006; Smith 2006). Lateline framed the story as a failure of policing to prevent the violence or make the communities safe for witnesses to come forward, the implication being that our most disadvantaged communities were being under policed.

### **Is policing in remote indigenous communities corrupt?**

This brings us to the question whether the maladies of over and under policing fit with the notions of corruption that we have explored. Are over and under policing in our remote indigenous communities forms of police corruption?

Let us first consider the question of over policing in remote indigenous communities. On one hand, there is a strong argument that over policing involves deviation from norms or rules. Applying public order offences more strenuously against the indigenous population, for example, is a departure from the community belief in the rule of law, its equal application to all and freedom from discrimination. That said, it is not unlawful to apply the strict letter of the law and doing so does accord with community standards to the extent that they are embodied in our criminal codes. Indeed, the ‘law and order’ elections of the 1990s demonstrated that there is strong support for tough policing and tough sentencing.

On the other hand, it is hard to see how over policing involves the abuse of office for private gain, although it would depend on the circumstances. Over policing could involve private gain if, for example, officers chose to crack down on public order offences only in remote communities in order to meet arrest quotas. Another example might be where police charge indigenous hotel patrons for minor offences under policing or liquor licensing laws, such as refusing to leave the premises when intoxicated, but do not charge the town's only hotel. This has been alleged in the community of Wiluna (Leicester 1995).

What about under policing in remote indigenous communities? Under policing definitely departs from our usual expectations that police will enforce the law and take action against those who commit serious offences. It also breaches the community standard that the criminal justice system should treat like cases alike and that the assault of a black woman demands the same response as the assault of a white woman.

In anti-corruption theory, the extent of an official's discretion is a key factor in determining the space for corruption. Under policing in remote communities raises this issue very sharply because police officers are deciding which aspects of the law they will and will not enforce. Certainly there is a strong argument that at least some of the under policing around sexual abuse and domestic violence stems from a desire to be sensitive to indigenous culture and customary law and to avoid promulgating 'racist' stereotypes. However well-intentioned the under policing may be, the stronger argument to my mind is that deciding not to serve and protect a section of the population is not a proper exercise of police discretion.

As with over policing, it is unclear how under policing could be said to involve abuse of office for private gain, although it would depend on the circumstances. If officers were under policing on sexual assault because these offences are notoriously hard to prove – especially in remote communities where traditional payback or intimidation is said to make many complainants and witnesses withdraw their testimony before trial – and were instead focusing on public order offences, this might involve private gain or at least the expanded concept of 'group or organizational gain' that Loree identifies (2005, pp. 3-4).

Generally speaking, the maladies of over policing and under policing can all fall within the modern conception of corruption as involving moral derivation and/or private gain, but it depends on the definition we adopt and the circumstances in which the conduct arises. Such conduct may not fall within the definition of corruption put forward by the Wood Royal Commission because, although it could well constitute a misuse of office, it may not be adjudged unlawful or *mala fide* depending on the circumstances. Under and over policing would be more likely to meet the definitions set down by the state and territory legislatures, particularly definitions that point to breach of public trust or to conduct that is improper, unbecoming or below reasonable community expectations.

### **Are anti-corruption strategies the way forward for policing in remote indigenous communities?**

If we now assume that the maladies facing policing in remote indigenous communities may constitute corruption, this brings us to the question of whether we should tackle these problems using the same anti-corruption strategies applied to policing elsewhere. There is no solution in the literature to the problem of corruption in policing and, indeed, there is a general acceptance that elimination of corruption is unrealistic (Newburn 1999, p. 45). There are, however, recurring strategies that inquiries over the years have recommended for controlling corruption and Newburn points to four broad categories:

1. Human resource management (such as targeted recruitment, training of recruits in ethics and values, building pride in the police service, and making superior officers personally accountable for corruption in their commands)
2. Anti-corruption policies (such as codes of conduct and ethics)
3. Internal controls (such as preventative controls and punitive controls, including tightening supervision, increasing detective efforts and curtailing discretion to reduce opportunities for corruption), and
4. External environment and controls (such as encouraging public vigilance and reporting) (Newburn 1999, p. 28).

Interestingly, these are the same strategies recommended to the 'soft corruption' found in policing in multicultural societies. In New South Wales, Chan examined the problems facing the New South Wales Police Service in policing a multicultural society in the wake of 'revelations of systemic corruption and malpractice' at the Fitzgerald Commission of Inquiry and the Wood Royal Commission (Chan 1997, p. 1). She argued that police racism (and, by implication, corruption) continued to exist because it is 'embedded' in the nature of police work, police accountability, and police culture. Chan adopted a dual typology of reform strategies that had used in the British context: 'tightening the rules' and 'changing the culture' (Brogden et al. 1988).

The first type of reform, 'tightening the rules', is directed at controlling the exercise of police discretion (Chan 1997, chapter 3). It could occur internally at the institutional level, through the setting of professional standards, introduction of codes of practice and requirement of transparent record keeping. It could also occur externally at the government level through legislative reform, establishment of monitoring schemes, or introduction of an integrity commission to oversee complaints. However, Chan saw a number of issues with attempts to tighten the rules. She expressed concern that the tightened rules could be ignored or subverted at the operational level because high level rules do not provide clear guidance for everyday police work and are subject to interpretation.

The second type of reform, 'changing the culture', involves either 'taking the police to the community' through recruitment and training strategies or 'bringing the community to the police' through community policing strategies, such as consultative committees or Neighbourhood Watch (Chan 1997, chapter 3). However, Chan noted several issues with changing police culture. Attempts to change the culture from above could be undermined, she said, by 'the reality of police work and the "common sense" of the police occupational culture'. In police services, 'deviant cultural practices' are often made by officers (whom Lipski would have described as 'street level bureaucrats') in order to deal with uncertainty and order their exercise of discretion and thus changing the workforce through recruitment or training is unlikely to have desired effect. New officers would continue to adopt the same or modified practices unless the nature or structure of police work were also changed.

In Britain in 1999, Macpherson took a broadly similar approach to when looking into the problems facing the Metropolitan Police Service in the light of the ineffectual investigation of the death of Stephen Lawrence. He did not find evidence of 'hard-core corruption', but instead found that 'institutional racism' and 'professional incompetence' had marred the police investigation (Macpherson 1999 para 46.1).

His recommendations went to the heart of some two types of anti-corruption strategies that Chan considered: 'tightening the rules' and 'changing the culture' (see Macpherson 1999 chapter 47). To tighten the rules, Macpherson made a number of recommendations to strengthen police accountability by making it clear that racism would usually warrant dismissal at internal disciplinary proceedings and by instigating independent investigations of police officers. He also recommended comprehensive codes of practice for reporting and recording 'racist incidents'. To change the culture, Macpherson recommended a number of changes to police recruitment and training. This included targets for recruiting, progressing and retaining officers from ethnic minorities in order to reflect the ethnic mix of the community, together with general training in cultural tolerance and specialised training for police liaison officers.

Are these same strategies applicable to the maladies of over policing and under policing in remote indigenous communities? The impact of the remoteness of these indigenous communities, compared with multicultural communities embedded in urban Britain and Australia, should not be underestimated. For example, tightening the rules will be particularly difficult in remote communities, which can be hundreds of kilometres from head office in Darwin or Brisbane and even hours from the closest other police units in nearby communities. It will also be particularly challenging – although not impossible – to encourage public vigilance and reporting but will take time given that the indigenous residents may have no experience of a well functioning service against which to compare an officer's conduct.

There have certainly, over the years, been many calls from outside the police service for the implementation of such strategies to change police culture. For example, the active recruitment of more Aboriginal people into the police service was

recommended by the Royal Commission into Aboriginal Deaths in Custody (Johnston 1991). In many remote indigenous communities, however, the quality of school education needs urgent improvement if the next generation of school leavers will have the skills to join the police service. Recent evidence in the Northern Territory suggests only one in five children were achieving the Year 3 and Year 5 literacy benchmarks, while on the western Cape in Queensland, only one in ten children was proceeding to Year 12 (see Storry 2007). This leaves a very small group of school leavers from remote indigenous communities who may be able to meet police service entry requirements.

The Cape York Justice Study (Fitzgerald 2001), the Palm Island Select Committee report (2005) and the Palm Island Future Directions report (McDougall 2006) all recommended community policing measures. There is some evidence to suggest that community policing measures can be successful. The evaluation of the Queensland Aboriginal and Torres Strait Islander police (QATSIP) trial in the Yarrabah, Badu Island and Woorabinda communities found that it was sufficiently successful to warrant permanent implementation, while identifying areas for improvement (see Cunneen et al. 2005, p. 184).

### **Proposals for reform**

In certain political circles, there has been a reluctance to tackle the problems facing policing in remote indigenous communities and to place it into the 'too hard basket'. However, corruption and anti-corruption theory can be applied to the malaises of over and under policing to help us 'diagnose' the problem and work towards a treatment program, although it will not provide a 'one size fits all' cure.

The first step must be to ensure that there are consequences for corruption. In the case of the death in custody of Doomadgee on Palm Island, the 'soft corruption' in Hurley's decision to arrest Doomadgee for disorderly conduct led to the 'hard-core corruption' of other officers seeking to protect him from the consequences of his action. At the very least, these officers should have faced serious disciplinary action for compromising an investigation.

The next step must be to change the culture of policing in remote indigenous communities. In the short term, this means rostering experienced officers with excellent records in communities for extended periods of time. On Palm Island, for example, officers are only rostered temporarily for as little as a month on the island and this means that relationships with the community are not given sufficient or sustained attention (see McDougall 2006). The Cape York Study also expressed concern about the practice of young officers serving only six month rotations in community because the officer does not have time to build an understanding and communities do not have a stable force (Fitzgerald 2001). While the anti-corruption literature often recommends job rotation to reduce opportunities for corruption, rotations of a year or less are simply too short to build community engagement and understanding in these communities. In the longer term, education on Palm Island needs urgent improvement so that the next generation of school leavers will have the skills to join the police service themselves. A literate and engaged community would also more likely to play a civil society role maintaining vigilance and reporting on police corruption.

This brings us to the question of community policing measures. Community policing measures are an example of a frequently recommended anti-corruption measure which can be problematic and have unintended consequences. For example, a submission to the Cape York Justice Study from the Hope Vale community complained that community police have written by-laws to follow and act upon but do not enforce these laws (Fitzgerald 2001). In communities like Aurukun where tension often simmers between the five clan groups, an indigenous officer from one clan group would face an added burden when seeking to maintain the peace. There are examples of success, like the QATSIP trial, but perhaps this is simply not a 'one size fits all' solution.

## **Conclusion**

Building on the literature on corruption and anti-corruption in policing in multicultural societies, this paper has applied corruption and anti-corruption theory to the maladies of over and under policing in remote indigenous communities. Anti-corruption theory can be a useful matrix for understanding policing in indigenous

communities and finding ways to work through the problems that officers face, but it will not provide a cure.

More broadly, the discussion in this paper does raise for me the question whether we should be drawing a distinction between 'hard core corruption' that is knowingly corrupt or involves private benefit to the public official, 'soft corruption' that falls into an ethical grey area, and professional incompetence, malpractice or other impropriety. The concept of police corruption now extends to conduct that is not unlawful or motivated by private gain, but breaches the unwritten social contract between the police and the public. This does not sit comfortably with the legal norm that the criminal law should not be retrospective and that citizens should be able to base their conduct on known rules. For that reason, we should be very careful about applying real world sanctions for grey area conduct.

## Reference list

- Corruption and Crime Commission Act 2003* (WA), section 4.  
*Crime and Misconduct Act 2001* (Qld), schedule 2.  
*Independent Commission Against Corruption Act 1988* (NSW), section 8.  
*Police Regulation Act 1958* (Vic), section 86A.
- Aboriginal Lands Task Force 2007, *Progress on the APY Lands*, Department of Premier and Cabinet, South Australian Government.
- Acosta, F 2003, *Canada and the New Challenges Posed by Corruption in the New World Order: A Literature Review*, Research and Evaluation Branch, Community Contract and Aboriginal Policing Services Directorate, Royal Canadian Mounted Police, Ottawa.
- Boe, A 2005, 'Palm Island – 'Something is very wrong'', paper presented to ANU Public Lecture Series 2005, Australian National University, Canberra, 28 September 2005.
- Brogden, M, et al. 1988, *Introducing Policework*, Unwin Hyman, London.
- Chan, J 1997, *Changing Police Culture: Policing in a Multicultural Society*, Cambridge University Press, Cambridge, UK.
- Crime and Misconduct Commission 2007, *Inquiry into Policing in Indigenous Communities: Issues Paper*.
- Cunneen, C 1992, *Aboriginal Perspectives on Criminal Justice*, Institute of Criminology, Sydney.
- Cunneen, C, et al. 2005, *Evaluation of the Queensland Aboriginal and Torres Strait Islander Justice Agreement*, Institute of Criminology, University of Sydney Law School.
- Fitzgerald, T 1989, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct*, Queensland Government Printer, Brisbane.

- 2001, *Cape York Justice Study Report*, Department of the Premier and Cabinet, Queensland Government, Brisbane.
- Gordon, S, et al. 2002, *Putting the Picture Together: Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, Department of the Premier and Cabinet, Western Australia.
- Johnston, E 1991, *Royal Commission into Aboriginal Deaths in Custody National Report*, Adelaide.
- Jones, T 2006, 'Crown Prosecutor speaks out about abuse in Central Australia', *Lateline*, 15 May 2006.
- Larmour, P 2006, 'Diagnosing the disease of corruption: what different disciplines say about curing corruption', *Policy Briefs*, no. 2 Corruption and Anti-Corruption, pp. 7-10.
- Leicester, S 1995, 'Policing in Wiluna: A Desert Community Takes Issue with Over-Policing, Meal Allowances and Social Justice', *Aboriginal Law Bulletin*, vol. 3, no. 72, p. 16.
- Loree, D 2005, *Corruption in Policing: Causes and Consequences, A Review of the Literature*, Research and Evaluation Branch, Community Contract and Aboriginal Policing Services Directorate, Royal Canadian Mounted Police, Ottawa.
- Macpherson, W 1999, *Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny*, Presented to Parliament by the Secretary of State, London, United Kingdom.
- McDougall, S 2006, *Palm Island: Future Directions, Resource Officer Report*, Department of Aboriginal and Torres Strait Islander Policy, Queensland Government.
- Mulgan, R 2006, 'Democracy and Political Corruption: Idealism versus Realism', *Policy Briefs*, no. 2 Corruption and Anti-Corruption, pp. 1-3.
- Neill, R 2002, *White Out: How Politics is Killing Black Australia*, Allen & Unwin, Sydney.
- Newburn, T 1999, *Understanding and Preventing Police Corruption: Lessons from the Literature*, Police Research Series Paper 110, Policing and Reducing Crime Unit of the Home Office, London.
- Northern Territory Police Fire and Emergency Services 2006, *Annual Report 2005/06*, Northern Territory Government.
- Nowra, L 2007, *Bad Dreaming: Aboriginal Men's Violence Against Women and Children*, Pluto Press, North Melbourne.
- NSW Aboriginal Child Sexual Assault Taskforce 2006, *Breaking the Silence, Creating the Future: Addressing Child Sexual Assault in Aboriginal Communities in NSW*, NSW Attorney General's Department, Sydney.
- Palm Island Select Committee 2005, *Palm Island Select Committee Report*, Legislative Assembly of Queensland, Brisbane.
- Philp, M 1997, 'Defining Corruption', *Political Studies*, vol. 45, no. 3, pp. 436-62.
- Robertson, B 2000, *The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report*, Queensland Government.
- Smith, S 2006, 'Paper reveals sexual abuse, violence in NT Indigenous communities', *Lateline*, 15 May 2006.
- Snowball, L & Weatherburn, D 2006, *Indigenous over-representation in prison: The role of offender characteristics*, Contemporary Issues in Crime and Justice No. 99, NSW Bureau of Crime Statistics and Research, Sydney.

- Storry, K 2007, *What is working in good schools in remote indigenous communities?*, CIS, Sydney.
- Valentin, J 2007, *An Independent Assessment of Policing in Remote Indigenous Communities for the Government of Australia*, Australian Government.
- Warren, ME 2004, 'What Does Corruption Mean in a Democracy?' *American Journal of Political Science*, vol. 48, no. 2, pp. 328-43.
- Weatherburn, D, et al. 2006, *The economic and social factors underpinning Indigenous contact with the justice system: Results from the 2002 NATSISS survey*, Contemporary Issues in Crime and Justice No. 104, NSW Bureau of Crime Statistics and Research, Sydney.
- Wild, R & Anderson, P 2007, *Ampe Akelyernemane Meke Mekarle "Little Children are Sacred": Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Northern Territory Government.
- Wood, J 1997, *Royal Commission into the NSW Police Service Final Report - Volume 1 - Corruption*, Royal Commission into the New South Wales Police Service Sydney.