New policing paradigms in Australia: Integrating research into practice

The problem of police in a democratic society is not solved merely by obtaining newer police cars, or more advanced technical equipment … What must occur is a significant alteration in the ideology of police so that police professionalization rests on the values of a democratic legal order rather than on technological proficiency.


Policing has gone through many transformations in the forty years since the above observation was offered by Paul Wilson and John Western in their path-breaking study of the Victoria Police Force. Across all jurisdictions, there has been a major transformation of regulatory environment of policing – with a concerted trend away from police governance through internal administrative guidelines (soft law), towards defining police powers and duties in legislation (hard law). While the common law powers of the constable tend to remain intact in most situations, modern police work occurs within a highly prescriptive environment, with much higher levels of accountability, oversight and public scrutiny than in previous eras.

With enhanced levels of education and professionalism, modern police agencies draw increasingly on research to inform, evaluate and reform law enforcement policies and practices. As a leading British policing scholar, Professor Martin Innes, recently observed, [c]ertain aspects of the delivery of policing are increasingly predicated on 'scientific' knowledge and expertise. The ideas of evidence-based or evidence-led policing are increasingly promoted within the senior ranks of police services, though as Innes noted, it is important not to overstate the influence of science since much of what counts as effective policing is more an 'art' or 'craft' than science!

Irrespective of the precise characterisation of this knowledge as art, craft or science, or an amalgam of all three, it is clear that the range of matters being subject to research (both within and outside police agencies) is no longer confined to maximising operational proficiency or effectiveness. There is an increasing body of research focused on more fundamental normative questions, such as the proper functioning, governance and legitimacy of policing.

Police agencies in Australia have invested significantly in new external research partnerships. This has been fostered in part by national competitive grant schemes including some large scale investments by the Australian Research Council (ARC). Policing agencies themselves have sought to enhance the co-ordination of research efforts through the recent creation of the Australian New Zealand Police Advisory Agency (ANZPAA).

Indeed, the research profiled in this special issue is testament to this investment, offering a window on some of the research supported by the ARC Centre of Excellence in Policing and Security (CEPS). CEPS was established in 2007 as a university research partnership between Griffith University, The Australian National University, The University of Queensland and Charles Sturt University, in order to foster national and international excellence in research. It does this funding PhD, postdoctoral, as well as longer term, large-scale research projects. Most significantly, CEPS aims to bridge the gap (or gulf) between the research and practice/policy communities. Not only is CEPS supported by research funding from policing agencies, including Queensland Police Service, Victoria Police, and the Australian Federal Police, but it benefits from hosting full-time secondments of police practitioners and policy makers to assist with projects.

In this special themed issue, CEPS researchers, drawn from a range of profiles and disciplinary backgrounds, share their reflections on some of the paradigm shifts (past, present and future) within policing. Of course, the focus is selective, but as readers will note, some thorny old chestnuts remain.
In the opening article, Professors Bronitt and Stenning return to the central (some would say iconic) place of discretion in policing, exploring how individual police officers as well as police organisations manage the conflicting imperatives to uphold the law without fear or favour, while at the same time tempering legality for sound policy and pragmatic reasons in specific cases. Here venerable notions of constabulary independence butt against modern demands for legal accountability and transparency in decision-making. Is that balance right in the present law, the authors wonder? In reviewing recent Canadian decisions on this issue, the authors reflect on how far courts should intrude into this traditional no-go zone for judicial review, and when does the exercise of discretion in fact amount to perverting the proper administration of justice?

A special theme focused on new policing paradigms could hardly overlook the growth of cross-border policing. Crime may know no borders, but policing remains fundamentally tied to a defined territory. Contemporary scholarship on cross-border policing charts the spectacular growth in recent decades of international policing, international law and international organisations in tackling transnational crimes like terrorism. This international focus, however, overlooks the domestic dimensions of cross-border policing that occur within Australia. Dr Saskia Huftagel remedies this domestic blind-spot, examining new and emerging strategies of cross-border policing co-operation in Australia, a topic that has not been accorded the priority it deserves by either academics or law reformers. Her research, based on interviews with practitioners in federal and State police services undertaken during her PhD, confirms the old adage that necessity is the mother of invention in relation to cross-border policing. In border areas, the office of special constable, which can be traced to the very beginnings of modern policing in Australia, has been enlisted to facilitate a new form of border police. Police specials, who are sworn into several jurisdictions, enable continuity of policing operations (including hot pursuits) across State lines. But local police ingenuity has its limits, and these efforts to date have been ad hoc, piecemeal and uneven. There have been some moves to formalise police co-operation through statutory frameworks, and in this respect, the tri-service police co-operation scheme established for the NPY Lands in Central Australia offers a new paradigm in cross-border policing. As Inspector Ashley Gordon from South Australia concluded in relation to the NPY Lands, [t]he initiative may have wide ranging effects throughout Australia, as this process may be the precursor for complete abolishment of State boundaries for justice related organisations, and a major paradigm shift for State and Federal Governments. The prognosis that internal borders will gradually wither away may be premature bearing in mind that the political drivers for this scheme lay neither with the police agencies nor the governments of Australia, but rather with the political efforts of local Aboriginal communities demanding better access to justice and policing services in remote Central Australia.

Criminal justice scholars have charted the modern trend towards a pre-crime society with its increased emphasis on the prevention and pre-emption of crime. This trend is most pronounced in the expansion of confiscation laws, as criminal law practitioner Sebastian De Brennans points out. Drawing on his experience of criminal defence work in New South Wales, De Brennan outlines the growth of civil measures now used to confiscate property and funds tainted by crime. What is striking in his account is the gradual normalisation of these draconian powers; how freezing notices in New South Wales, which do not require proof of conviction, are widely used by police pre-emptively to seize and dispose of tainted property, including the confiscation and disposal of low-value property, such as the family car used for drug dealing unbeknownst to its owners. The adverse impact of these powers on innocent third parties is critically reviewed from a human rights perspective.

Another manifestation of the pre-crime society is the importance attached to authorising early disruption and apprehension of criminal activity by police, which explains (in part) the increased priority and reliance upon covert policing methods. As Adam Chernok points out, Australian police increasingly resort to a range of covert methods including controlled operations. An increasing range of police agencies may obtain authorisation (with corollary criminal and civil immunities for participating undercover police and civilians) to undertake otherwise unlawful activity as part of the approved controlled operation. However, as Chernok points out, the model of regulation which focuses on legal compliance does not preclude the risk of unfair or wrongful entrapment. Drawing on international human rights law and case law, the article explores the extent to which the Victorian Charter of Human Rights and Responsibilities Act 2006, may modify and constrain the interpretation of State controlled operations laws.

The complexity of modern investigation is nowhere more apparent than in the interviewing of vulnerable persons who allege sexual victimisation. There have been significant strides in developing new methods for interviewing children in many jurisdictions, as revealed in several recent contributions to this Journal. Associate Professor Mark Kebbell and Dr Nina Westera, a forensic psychologist and senior police investigator respectively, review the research (including their own research studies) on the pros and cons of police video-recording interviews with adult rape complainants. Not only does the psychology of memory recall suggest that this material is the best evidence, but its availability may also assist the defence in preparing its case. As the authors insightfully point out, this change not only requires police investigators to acquire technological skills, but also involves a fundamental reappraisal of the usual partisan role of police in case-construction since both prosecution and defence have legitimate interests in
access to these interview recordings.

The article by Helen Punter focuses on new public order powers, specifically the rise of statutory move-on powers in Australia. These powers, enacted in every jurisdiction, are an entrenched feature of public order law, part of the toolkit of powers available to frontline police to combat disorder and antisocial conduct. Punter’s study focuses on Queensland, which has recently completed an independent review of the operation of move-on laws. Drawing on that review and recent data from Queensland and other jurisdictions, the article profiles the discriminatory patterns of (mis)use. These data and recent cases surveyed from several jurisdictions, reveal poor levels of police compliance with the statutory thresholds governing the use of these powers, as well as ineffective procedural safeguards. Having exposed failures of both policy and practice, the article concludes by recommending much-needed reform.

The legislation comment by Rebecca Wallis surveys one of the most significant and far-reaching developments in Australian criminal justice in recent years, namely, the Northern Territory Emergency Response (NTER). Although the discriminatory elements of the NTER have attracted adverse comment from some quarters, the criminal justice reforms and the new roles of the Australian Crime Commission (ACC) to deal with Indigenous violence and child abuse received scant attention from criminal lawyers and academics. Wallis rectifies this gap by charting the circumstances that led to the federal intervention into Aboriginal communities, as well as evaluating the new law enforcement roles and powers of the ACC. While not underestimating the challenge of dealing with the high rates of victimisation within Aboriginal communities particularly in relation to violence against women and children, the legislation comment highlights the discriminatory impact of the measures including the extension of the ACC’s broad investigative powers to all Aboriginal people, including those living in other parts of Australia. The NTER may be viewed as yet another incremental expansion in the scope of federal law enforcement and expanded Commonwealth intrusion into matters historically viewed as being firmly within the sphere of State and Territory criminal law.

History is a neglected perspective on Australia’s criminal law. The Criminal Law Journal in many respects has been one of the few standard-bearers of legal history through its Phillips’ Brief and the efforts of the distinguished lawyer, jurist and judge, the Hon Justice John Phillips AC QC, who sadly passed away in 2009. For over a decade, Phillips’ Brief offered a succession of historical vignettes and essays reflecting upon the history of criminal law and its most notable trials at home and abroad. It is gratifying to see the recent revival of Phillips Brief. In that regard, I am delighted to profile in this special issue the original archival research of two leading scholars, Professor Mark Finnane and John Myrtle (who for many decades was the Principal Librarian of the JM Barry Library at the Australian Institute of Criminology). In common with previous Phillips’ Briefs, this short essay exposes yet another forgotten episode of Australia’s post-war history, the 1963 United Nations Seminar on The Role of Police in the Protection of Human Rights. The UN Seminar, hosted nearly 50 years ago in Canberra, focused attention on the roles of police in the protection of human rights not only in Australia but across the Asia-Pacific region. Finnane and Myrtle outline the efforts of a distinguished group of international and local scholars, policy makers and practitioners in drawing out the critical connections between policing and human rights. Of course, a seminar on this topic was not without controversy, particularly since it spotlighted the first time in an international forum the discriminatory treatment of Aboriginal people in police custody. The defensive reaction of senior police in attendance to this perceived racial slur, which halted proceedings temporarily, foreshadowed many of the challenges ahead in acknowledging and remedying the daily injustices in Aboriginal communities caused by the under-enforcement or over-enforcement of criminal law. This final contribution’s topic harks back to the opening quotation offered by Wilson and Western in the 1970s, namely, the importance of linking policing not only to the promotion of efficient and effective crime control, but more fundamentally to the values of a democratic legal order.

Plus ça change, plus c’est la même chose!

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Footnotes

3 See Zedner L, “Pre-crime and Post-criminology?” (2007) 11(2) Theoretical Criminology 261, who observed that in the
emerging pre-crime society, crime is conceived essentially as risk or potential loss, ordering practices are pre-emptive and security is a commodity sold for profit.