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The Road to Mundingburra - Police unions and politics in Australia¹

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Policing is big business. The total government outlays in Australia by 1999 were almost \$4 billion. There are now more than 40,000 sworn police officers in the several state and territory jurisdictions. They are supported by more than 11,000 civilian employees². Like other human services industries policing costs a lot because salaries make up the large part of the budget, more than 80 per cent. These figures are for public police only. There is a large private sector, employing at least double the number of public police, not so readily documented but of increasing interest³. In an era of privatisation the public sector in policing needs to watch its private sector challengers - as it has for many decades.

The business of policing is complex. It has both a practical and symbolic dimension. The practical involves the tasks of public order maintenance, the prevention and detection of crime. The symbolic involves the production and dissemination of images of crime, criminals, victims, public order and disorder. Over the practical work police have a large degree of control, but with varying degrees of effectiveness. Over the symbolic they have less - but their symbiotic interaction with the media industry ensures that this can be a productive area of police work. It is also in the symbolic domain that the political relations of policing are most productively deployed.

We can talk about policing as an industry. We can also talk about it as a workplace. In that workplace there are large numbers of employees, their working lives organised by bureaucratic routines. But although the formal organisation of British-style policing owed a lot to military models it might also be said that civilian policing had about it something of a vocation. Certainly for many decades police surrendered certain civil and political rights once they were sworn as police. Their changing employee status in the twentieth century owed much to the history I want to address in this lecture, the history of the formation, legitimation and growing power of police unions during that century.

The aim of the history I want to examine will be to understand better what it is about our current institutions that make it possible for a particular array of political forces to have the effects that they do. For all those who want a judgment on whether the events before and after a by-election in the Queensland seat of Mundingburra in February 1996 were good or bad let me provide an advisory note at the outset – there

¹ This lecture draws on materials gathered for a continuing research project on 'Police unions and politics in Australia'. Support for this research has come from an Australian Research Council Large Grant 1998-9. I would like to thank a number of research assistants in the various states who have contributed to this continuing project, including Margaret De Nooyer, Iris Petrass, Katie Hall, Wade Matthews, Barbara Baird and Bernie O'Neil. I would also like to thank staff in a number of police union offices who have generously provided access to their library holdings.

² Statistics derived from the Australian Institute of Criminology website, <http://www.aic.gov.au/stats/facts99/sec6.html#police>. More detailed comparative data is usefully gathered in the annual reports of the Productivity Commission, which show for example that Queensland still has the lowest Australian expenditure on policing per person - Productivity Commission, Steering Committee for the Review of Commonwealth/State Provision, *Report on Government Services 2000*, p. 507, at URL: <http://www.pc.gov.au/service/gsp/2000/index.html>.

will not be a conclusive judgment about whether somebody should or should not have done certain things. The focus instead will be on giving an account of how certain things can be possible, how particular events are able to occur, given the array of political, legal and social institutions that make up the domain of policing. The simplicities of everyday political contestation do not allow much time for considering what makes things possible. My task here will be to resurrect some forgotten histories – and show how they might help to explain where we are today.

The materials of the past are fragmented, and the historian's task is one of constructing meanings out of these fragments available to us. In doing so historians frequently must deal with things mis-said or mis-heard – and somewhat like a psychoanalyst take them as symptoms of underlying determinations. By way of introduction let me take an example of such a disjuncture from the aftermath of the Mundingburra events. Five months after the by-election, and in the midst of continuing scrutiny of the police union deal with the National Party leaders, a *Courier Mail* columnist David Margan criticised the union's ongoing attacks on the CJC. The police union had claimed that the CJC was 'much worse than the Special Branch ever was'. Margan responded:

While the union talks about breaches of rights and the infamous Special Branch, I wonder if it objects to being offered the power to detain, for a reasonable but unspecified time, anyone suspected of committing an offence. /That is exactly what Police Minister Russell Cooper is considering giving them.

The comment did not pass the union by: 'PS David Margan', commented the union journal shortly after – it was the police service which was to get the revised powers, not the police union⁴.

The union was right. Margan's comment should have wondered whether the union objected to *police* being given new powers of detention. This little example of journalistic error however has more interest than might first appear. Consider a debate from the NSW parliament in March 1941 when members were considering a bill to establish a war-time police reserve. The measure was opposed by the NSW Police Association which had lobbied Labor Opposition members vigorously. Soon to be the responsible minister himself, the Labor member for Cessnock suggested that the government should consult the Police Association. The chief secretary responded: 'The Government, and not the Police Association, is responsible for the protection of the community!' Labor member for Botany and a future Labor Premier, Mr Heffron, joined in: 'in a matter affecting the preservation of law and order we must obviously look to the Police and those who make up the Police organisation'. The Chief Secretary objected: 'Not the Police Association!'. Labor members persisted with their characterisation of the Police Association as in effect the police force - the member for Kurri Kurri for example: 'Without a shadow of doubt, the Police Association is definitely responsible for the maintenance of law and order'.⁵

³ T. Prenzler, and R. Sarre. 1998. Regulating private security in Australia. Canberra: AIC (Trends and Issues Paper, no. 98).

⁴ *Courier-Mail*, 7 Jun 1996, p. 17; *Queensland Police Journal (QPJ)*, July 1996.

⁵ *New South Wales Police News [NSWPN]*, May 1941, pp. 8-9.

The constitutional flaws in the Labor politicians comments in 1941 might render analysis redundant. But whether we take Margan's comment of 1996 or Heffron's of 1941 we are dealing with a set of assumptions embedded in political discourse which equate the functions of an industrial union with the organisation and performance of policing. This might formally be erroneous - but *de facto* there seemed to develop in the twentieth century the possibility that such an equation makes sense. What were the conditions that made this possible? And were there any notable effects? The events at the Mundingburra by-election seem to offer some basis for exploring these questions. So let's start with a few minutes on the details of what happened in the by-election of February 1996, and its aftermath.

The elements of this story are recent enough for most here to recall them quickly⁶. In July 1995 the most popular state government in Australia all but lost office after Labor Premier Wayne Goss went to the polls. The police union had little if anything to do with this – but it wasn't disappointed. It had been engaged in a long-running battle with the government over police staffing levels and the Criminal Justice Commission (CJC) and other police organisational reforms. At the 1995 annual conference the executive was mandated to run an industrial campaign over staffing levels and the alleged threat to public safety arising from them.

Six months later Goss was forced to a by-election in the Townsville seat of Mundingburra. Early in January 1996 the police union executive decided to enter the political fray - \$20,000 was committed to a campaign focussed on police numbers. TV ads, a mobile billboard and radio talk back appearances would highlight the dangers to public safety if the government didn't employ more police.

That was the public campaign. Behind the façade was another set of union priorities. A Memorandum of Understanding (MOU) between the president of the police union, the leader of the Opposition and the shadow police minister was signed early in the campaign. The document was secret – it was not revealed to the coalition partners. Neither was it known to most members of the union, though later inquiry showed that its substance was known to most members of the union executive.

What was the objective of agreement? The MOU certainly had more police as its first priority. But there were plenty of other matters on the union agenda – more than 40 of them listed over 14 pages. Other demands of the union included a writing down of some Criminal Justice Commission powers of investigation into police discipline matters, a union say in the appointment of the next Commissioner of Police, and the sacking of a number of named senior police. Some matters of union security were mentioned, to most of which the politicians, not usually friends of trades unions, signalled assent. To most of the union demands the politicians 'agreed' – although the meaning of 'agreed' had many retrospective

⁶ The following brief account relies on official and legal reports and media commentary at the time, as well as C. Lewis. 1999. *Complaints against police: the politics of reform*. Sydney: Hawkins Press.; Criminal Justice Commission. 1996. Report on an Investigation into a Memorandum of Understanding between the Coalition and QPUE and an Investigation into an alleged deal between the ALP and the SSAA, December 1996.; *Queensland Police Journal*; and [Qld] *Re Carruthers v Connolly, Ryan and Attorney-General of Queensland*; and *Re CJC and Le Grand v Connolly, Ryan and A-G* [1997] *QSC*, 132 (Thomas J).

interpretations⁷ On a small number of matters there was a commitment simply to review existing arrangements.

Goss lost the by-election, and Labor lost government in February. Within the month, the *Courier Mail* revealed the existence of the secret MOU. By now Police Minister, Cooper referred the matter to the CJC. After legal advice the CJC appointed a retired NSW judge, Kenneth Carruthers QC, to investigate whether any electoral act or police misconduct offences had been committed in the signing of the MOU. In the meantime the government proceeded to address some areas of its commitments to the union – a review of the police service was established. And as public hearings into the making of the MOU continued, the likelihood of adverse findings against some of the principals seemed to increase. Members of the union executive tried to pre-empt this possibility when they sought an injunction against Carruthers and the CJC for bias in respect of them, an action dismissed in chambers in August 1996.⁸

The government's increasing antagonism to the CJC and Carruthers became a live issue from September when it appointed a Commission of Inquiry into the way the CJC had conducted its business over the years. Two ex-judges were appointed, one of them the source of earlier legal advice to Cooper exonerating his MOU actions and finding the document unexceptional. The Connolly-Ryan Inquiry, with its quasi-Royal Commission powers, almost immediately turned into a confrontation with the still unfinished Carruthers Inquiry, when the former demanded that Carruthers make available all documentation relating to his inquiry. Subsequently Judge Thomas of the Supreme Court would describe the demand as 'outrageous' and 'oppressive'⁹. Carruthers resigned almost immediately. Unfazed, the Connolly-Ryan Inquiry continued on its way, in spite of increasing concern over the appearance of bias on the part of Connolly. By early 1997 this had reached the stage where the CJC as well as Carruthers took their own legal action. A trial proceeded during 1997, during which Part-Time Commissioner Professor Homel disclosed that Inquiry Commissioner Connolly had told him that 'Now that our side of politics is back in power we can do a proper critique of the Fitzgerald experiment'. The result of the trial was the most decisive outcome of the entire episode – Judge Thomas found that there was a strong case of 'ostensible bias' on the part of Connolly, and ordered that the Inquiry be terminated.¹⁰

Left in the wake of this extraordinary saga of contested inquiries and jurisdictional dispute was the matter of the MOU. The CJC had referred the Carruthers materials for legal advice on any charges that might arise from the evidence taken. A report in December 1996 recommended that misconduct charges might be brought against some of the police involved¹¹. The wider issues raised by the MOU and the role of the police union remained for others to consider.

⁷ C. Lewis. 1999. *Complaints against police: the politics of reform*. Sydney: Hawkins Press., p. 161.

⁸ *Wilkinson & Ors v Clair, Carruthers and CJC* [1996] Unreported, in Chambers [Byrne J].

⁹ *Re Carruthers v Connolly*. (see fn. 6 above)

¹⁰ *Re Carruthers v Connolly*. (see fn. 6 above)

¹¹ Criminal Justice Commission. 1996. Report on an Investigation into a Memorandum of Understanding between the Coalition and QPUE and an Investigation into an alleged deal between the ALP and the SSAA, December 1996.

So much for the story of the MOU, the facts as it were.

I will argue in this lecture that what makes possible the kind of events that took place in January and February 1996 is a much longer history. The Mundingburra story is a Queensland one. But like most good stories it can be understood beyond the boundaries of this state and jurisdiction. That is because its essential elements are shared by other jurisdictions. What are those essential elements? I think they can be summarised as these:

1. a police union as the collective voice of police officers who have the political rights shared by those they police.
2. a work environment that has been increasingly affected by workplace reform in the more recent past
3. a political environment sensitive to the politics of what have become known as 'law and order'
4. a criminal justice environment in which large numbers of players contest ownership, direction, resources, rules and outcomes of policing decisions.

If justification is required for a history of these elements then consider this. One hundred years ago police unions did not exist, appeal rights of police employees in matters of transfer, promotion or discipline were almost unknown, and police departments with their own ministers did not exist. More than this, however – to understand Mundingburra it is necessary to understand how and why we got from there in 1900 to here in 1996 or 2000. Police union legitimacy is built on a shaky structure of legal authority, political approval, media affirmation and membership confidence. The contingencies are many – and the limits to what the union can or might do are real. Mundingburra's story is partly about defining those limits. If what happens in everyday politics has any deeper meaning then the meaning of Mundingburra is what it says about how our political fates are organised, and how they can be shaped. It's not the most important story that can be told about Australian politics today – but it has its place, and I hope I can justify here a view that it repays historical reflection.

A lecture cannot do the subject justice, which is why a book will be necessary. Here we can offer just some of the stories from a longer saga. I want to start with a story from the law; continue with a history of police unions and the labour movement; add a bit about the power of commissioners and its contestation by unions; and conclude with some general observations on my theme, police unions and politics.

Legal business

Police administration at the beginning of the twentieth century was largely quarantined from legal or political scrutiny. Police constables were workers with a large amount of discretionary power deriving from their possession of the office of constable, but with very little capacity to defend themselves in their status as workers in the employ of the Crown. In a judgment that reached beyond the Australian jurisdiction, the High Court decided in *Enever v. the King* in 1906 that a constable acted on his own discretion in making an

arrest and that his employer, the Crown, was immune from a suit for wrongful arrest¹². In the same year the Queensland Supreme Court concluded that a Constable Foley had been wrongfully dismissed as a result of an adverse inspector's report – appealing to the High Court the government was successful in overturning the Queensland decision and obtaining a judgment that a constable could be dismissed at the will of the Commissioner - further, reasons for dismissal did not have to be given to the constable¹³.

Police had other civil disabilities, although some of these had been removed by this time – in particular they had at last gained the vote after being initially excluded from the extension of the franchise. But their possession of political rights was limited – and would be a sore point for decades after the establishment of the police unions. None of their civil or political disabilities were of as much concern to the ordinary constable however as the seeming untrammelled power of a Police Commissioner to dispose of the constable as he thought fit.

Enter the figure of Constable Gibbons of the NSW police, the unhappy target of an adverse inspector's report in 1930. He had applied for transfer to another station in circumstances which suggest his desire to escape a situation of great friction with his superior officers. Forwarding the transfer application, Inspector Duffell recommended it be rejected. Not only this – Duffell claimed that Gibbons was a 'loafer and a liar of the worst type, a dangerous man and a man not amenable to discipline and a man opposed to law and order'¹⁴. Disciplinary action was taken against Gibbons – he was fined, turned out of plain clothes back to uniform and transferred to Parramatta, a slight that he appears to have taken as somewhat equivalent to the Queensland practice of being sent to Charleville.

Constable Gibbons—full name William Resolute Gibbons - was not one to take his setbacks quietly. In 1923 the NSW Police Association had won its battle for an appeal board before which to contest discipline and transfer decisions¹⁵. Gibbons appealed and succeeded in having his conviction overturned. In October 1930 he asked the union for assistance to sue the inspector. The matter was unprecedented and there were some on the executive who worried that it would be an 'extraordinary precedent to support a civil action against an officer and leave the executive open to similar requests'¹⁶. Nevertheless the union decided to support Gibbons' action. It was a vital test case for the police unions. Many members smarted under what they saw as the arbitrary and biased judgments of their superiors. It was equally a vital matter for officers like Duffell, and one in which Commissioners and governments might have some considerable interest.

The case was costly and the initial outcome disastrous for the union. After spending 400 pounds in supporting Gibbons, the union was faced in December 1931 with an unambiguous judgment in the NSW

¹² *Enever v the King* [1906] 3 CLR, 973-994.

¹³ *Ryder v. Foley* [1906] 4 CLR, 422-454.

¹⁴ *NSWPN*, Oct 1930, p. 38.

¹⁵ *Oldfield v Keogh*, [1941] 41 *NSWSR*, 206-215. *Police Regulation (Appeals) Act, no. 33, 1923*.

¹⁶ *NSWPN*, Oct 1930, p. 38.

Supreme Court. The court concluded that police reports like those of Inspector Duffell were the subject of absolute privilege, and so could not be the subject of Gibbon's libel action. It says something about the depth of feeling on these internal departmental proceedings that the union, at the height of the Depression, was then prepared to support an appeal by Gibbons to the High Court.

The High Court judgment of *Gibbons v. Duffell* has become part of Australian defamation law, and doubtless has its own special interest in that area. I would like to focus here however on understanding its place in the administrative history of policing. For what the High Court did in 1932 was to bring police departments closer to the world of everyday employment and drag them away from their putative origins in military administration.

The High Court was unanimous in the view that absolute privilege should be restricted to a limited range of documents, such as court proceedings, those of parliaments, and communications between ministers and between them and the Crown. Beyond this the legal authorities had recognised that military reports on armed forces personnel might also be protected. But the notion that police departments should be entitled to operate under the same rules and protections as those of the army and navy, a conclusion adopted in the NSW Supreme Court, was decisively rejected. The main judgment concluded that the analogy drawn between police and the military was 'unsafe... imperfect and in many respects false. The *Police Regulations Act* and regulations thereunder bear small resemblance to the Articles of War and the Army Act'¹⁷. In a separate judgment, Evatt J dryly reflected:

The officers of police are seldom engaged in operations of a military character. They are organized to maintain the peace of the King, but that is a right and a duty which the law imposes upon all the King's subjects. The main work of the police force is to prevent and detect the commission of offences against the law of land. They also discharge other functions. To them is committed the control of vehicular and pedestrian traffic, they administer licensing regulations and systems, and they register dogs. No one desires to underestimate the dignity and importance of their principal duty. Perhaps it is sufficient to say that much of their work is not different in kind from what is done by many of the departments of the Executive Government.¹⁸

Whereas the NSW Supreme Court had described the police as a 'State force organized on a semi-military basis for preservation of the safety of the State from internal enemies, as the Army and Navy are for its preservation from external enemies', Evatt more soberly observed that 'Those who break the law - whether it be contained in the *Crimes Act* or the *Liquor Act* - are punishable by the King's Courts, but they do not become the King's enemies.'¹⁹ For such reasons the High Court concluded that a police inspector's report on another officer could not be regarded as absolutely privileged - 'There is nothing subversive of Police administration in requiring that he shall act honestly and for the purpose of his duties in making such a report'²⁰.

¹⁷ *Gibbons v Duffell*, [1932] 47 CLR 521-537 at 527 (Gavan Duffy CJ, Rich and Dixon JJ).

¹⁸ *Gibbons v Duffell*, [1932] 47 CLR, at 533 (Evatt J.).

¹⁹ *Gibbons v Duffell*, [1932] 47 CLR, at 533 (citing the NSW Supreme Court), 535 (Evatt J.).

²⁰ *Gibbons v Duffell*, [1932] 47 CLR, at 528 (Gavan Duffy CJ, Rich and Dixon JJ).

The decision was a vital one for the unions and their members. It helped clarify, at least in a judicial domain, the expectations of due process and fairness in personnel matters. The union journal welcomed the decision, noting that it would not preclude making an adverse report if the claims were true: 'As it appears to us to be simple justice, there need be no fear that it will disturb Police discipline. On the other hand, we believe it will make for better discipline and the triumph of right'.²¹

Did decisions such as *Gibbons v. Duffell* help to develop a personnel system in which judgments would be avoided and decisions delayed, in which commissioners and their senior officers would be hamstrung by the fear of legal or industrial action over difficult decisions? Arguably the commissioner's discretion in personnel administration was formally narrowed by this very explicit demarcation of police from military discipline. Later, the NSW Association would seek to consolidate the gains won here by successfully moving for the repeal of a rule requiring absolute obedience to an officer's superiors²². Of the same order was the 1946 Victorian repeal of the chief commissioner's power of dismissal.²³

Gibbons v Duffell was not an isolated action in which the unions would support aggrieved junior police to combat the comments of those superior officers. Indeed in an organisation in which rules of natural justice and due procedure were yet to gain a foothold, and in which bureaucratic formalism could rule, and ruin, one's career, it is scarcely surprising that defamation actions were a common resort of unhappy police. It was a precedent – and one followed enthusiastically by some police unions over the next 20 years – especially by the aggressive Queensland Police union which regularly funded defamation actions against disciplinary decisions during the 1930s and 1940s.

The story of *Gibbons v Duffell* seems to me also to be an emblem of the transitions in police administration across the half century following the establishment of the police unions. Central in that transition was a writing down of the commissioner's power to discipline his subordinates. But not all Commissioners adapted readily to such changes. So we need to look at another kind of story to understand the peculiar power of police unions today. That is the story of the consolidation of the police unions as industrial organisations with political affiliations and freedoms.

Police unions as labour unions

The High Court was ready enough by 1932 to conclude that policing required something less sturdy around it than the walls of immunity largely defending the armed forces from legal scrutiny. Arguably that realistic view was consistent with the political context which allowed Australian police the freedom to organise in pursuit of their collective goals. Police unions internationally now share a great deal in common despite the varied industrial relations and political environments in which they work. But the longer term trend is that

²¹ *NSWPN*, Sep 1932, p. 1.

²² *NSWPN*, Mar 1945, p. 19.

²³ [Vic] *Police Regulation Act 1946*, s. 22. See the legislative history of the dismissal power outlined by O'Bryan J of the Victorian Supreme Court in *O'Rourke v Miller*, [1984] VR 277 at 297-304.

police unions elsewhere have moved more towards Australian-style conditions and freedoms. The remarkable Australian achievement is how early police unions were legitimated, how early the rights of police to assert their collective interests were won. But not all things always went their way – and the historical perspective allows us to appreciate how contingent are their rights and freedoms to organise .

A little noticed objective of the more than 40 individual matters of the Mundingburra MOU strikes at the heart of police union limits. The penultimate page of the Memorandum addressed a number of clauses in the area of what is known in industrial relations jargon as ‘union security’. Union security refers to all those privileges that are allowed to an organisation enabling it to attract and maintain membership effectively and efficiently. In its extreme form, union security is most effectively obtained when a closed shop is given legal or industrial protection. Preference to the employment of unionists, or even the imposition of compulsory union membership has been from time to time an important objective of Australian labour unions. Sometimes it has been a plank of police unions as well – but the matter becomes hypothetical when union membership approaches rates of 99%, which has been the case for most Australian police unions. But there are other ways in which governments or police departments or industrial courts can maintain union privileges – payroll deductions of union dues, secondment arrangements for union executive officers, leave provisions, provision of meeting places and so on.

In recent years changes in the Australian industrial relations environment have made these privileges less secure. The extent to which even police unions feel unsettled by this context was evident in the MOU. On almost all the ‘industrial matters’ nominated by the union the politicians signed up as ‘agreed’– individual contracts were not acceptable, payroll deductions of union dues would ‘never be terminated’, there would be no legislation interfering ‘with the QPUE [Queensland Police Union of Employees] operating as a Trade Union representing its members’. There was one matter however on which there was no agreement. Item G was a demand for the deletion of ‘the second dot point of Section 5. 3 of the Police Service Administration Regulations 1990’. As far as the National Party leaders were prepared to go down the path of recognising the industrial privileges of the Queensland Police Union, they could not agree to this one. Section 5.3 consisted of two regulations pertaining to ‘Withdrawal of services’. The second dot point was in fact a no-strike clause. As shadow minister Cooper's commentary in the MOU stated:

this would be difficult to agree to. The Police Service is regarded as an essential service in maintaining peace, law and order and security for the people. Any withdrawal of that service could place the people at risk and this would have unacceptable consequences. The Coalition believes that attention to and resolution of matters of concern existing within the Police Service and its systems should negate any need to debate Section 5.3²⁴.

²⁴ Memorandum of Understanding [MOU], pp.13-14. The relevant part of Section 5.3 relating to ‘Withdrawal of services’ provided that an officer must not ‘do any act or make any omission which, if done or omitted to be done by two or more officers, would constitute a strike within the meaning of the Industrial Relations Act 1990’ - *Police Service (Discipline) Regulations 1990, Queensland Government Gazette*, No.57 (16 June 1990) :924-942.

The no-strike clause may be regarded as one of the few remnants of the nineteenth century origins of police administration. It is also a reminder of a limit on the otherwise normalising effect of the Australian arbitration system on labour relations. Behind the no-strike clause constraining this and other Australian police unions lies a history of occupational exceptionalism, but one of declining significance as the century wore on.

Early police unionisation was for the most part sober and responsible. It might even be sanctioned to a degree by the paternal oversight of the commissioner. A core distinction between the idea of a police association and that of a police union – a distinction lost in all but name today – was that between police who would organise within something of a professionalising ambit, and those who would organise as workers with interests quite separate to those of the employer. The South Australian Police Association was formally the first police union in Australia, dating from 1911. Their initial meetings were held with avowed objects of lifting the standard of policing, which would of course be achieved in part by improving their wages. The police commissioner smiled on them, as did the Labor government of the time, whose minister responsible for police had once been sacked for organising a strike in a printery. A change of government a short time later saw the fledgling Association almost closed down²⁵.

Other associations were in Victoria, NSW and Tasmania – all of them involved judicious approval by the local police chief, at a time of increasing social unrest at the end of the Great War. A different model was pursued by the police radicals in Queensland and Western Australia – here emerged police unions. The political rhetoric of red revolution was not absent from the early debates of the Queensland police whose collectivist aspirations had been met with hostility by the commissioner before he was given his marching orders by the incoming Ryan Labor government. A workerist flavour never left the Queensland union and its early achievements were substantial – the first for example to get a police appeals board into place, in 1920, and with a tribunal that included the secretary of the police union²⁶. The appeal board was to survive until the post-Fitzgerald reforms – and re-emerged in the Mundingburra MOU as a union plank.

The tension between the models of an association of police professionals and a union of police workers did not ease quickly. A union had dangerous connotations for many – would police strike for example, in sympathy with other rebellious workers? In some places opinion hardened on this matter. In Victoria the chief commissioner's and government's anxieties about the dangers of police collectivism were realised when a lot of Melbourne police went on strike in November 1923 – a good deal of damage and looting of city shops was one result on the first day of the strike, although fears of the unrestrained mob were quelled by the lack of trouble at the Melbourne Cup the following Tuesday. Governmental preference for an

²⁵ *Police Journal (South Australia) [SAPJ]*, Nov. 1929, pp. 23-32.

²⁶ J. Fleming. 1995. Shifting the emphasis: the impact of police unionism in Queensland, 1915-1925. *Labour History* (68):98-114.

association bound within the folds of the police department was consolidated by the strike – especially since the strike was largely of those who were *not* members of the Police Association²⁷.

The difference between ‘association’ and ‘union’ was however rendered nugatory in Australia by the way in which most unions were quickly institutionalised within the industrial relations apparatus. Again Queensland led the way, with the union being registered as an industrial organisation in 1920 and thus having access to the arbitration court²⁸. Other unions had to wait longer, and some pondered what they could do to sell their case in a political context characterised by a growing Labor hegemony. The most striking outcome of this embracing of labourism and its institutions was in Western Australia. The police there had started out with an association, one that boasts its journal dating from 1917 as the first police union journal in the world. But in pursuit of industrial advantages the association moved to become a registered union in 1926 – and effected a change of name to become the Western Australian Police Union of Workers²⁹. Some members worried that this would mean they would have to join other striking unionists. Their anxieties would be repeated down the years as one after another the Australian police unions became affiliates of local trades halls, or even as in Western Australia again, voted overwhelmingly to join the Labor Party in 1943.

The association with the labour movement has been for the most part pragmatic, but the ideological base was not wholly absent. In 1947 the members of the NSW Police Association were reminded by their secretary of the importance of standing with the union movement.

History and fact have shown that the working class, as individuals standing alone, cannot improve their own lot, but that with a collective effort much can be done for their common good. That common good is to be found in affiliation with the separate State Labour Councils, and that combination calls for immediate ... solidarity of action.³⁰

This *Police News* editorial followed a recent visit to an executive meeting by the general secretary of the Western Australian Police Union. He had already urged the benefits of affiliation at an interstate Police Federation conference. In Western Australia the police union had had trouble getting itself heard until it affiliated with the Labor Party. Since then it had found that it had the backing of the party organisation, and of strong unions, in pressing its case for improved conditions such as the 40 hour week. The link had been vital since, as the WA secretary noted, ‘you will find Labor Governments have a conservative feeling with regard to a Police Force - that it is not a good tradition to allow the Police to get too many improvements’³¹.

Certainly there have been key figures in the police union movement who have been Labor activists, especially during the decades of Labor hegemony from the 1920s to the 1950s. But it was an association which was very sensitive to the mood of the times. When the police became embroiled in controversy over

²⁷ G. Brown, and R. Haldane. 1998. *Days of Violence: The 1923 police strike in Melbourne*. Melbourne: Hybrid Publishers.

²⁸ Fleming, 1995, ‘Shifting the emphasis’.

²⁹ *The Police News (WA)* [WAPN], Feb, Mar 1926

³⁰ *NSWPN*, Dec 1947, p. 8.

³¹ *NSWPN*, Dec 1947, p. 10.

their actions in the policing of protest demonstrations in the late 60s, there were many in the police unions eager to cut their ties with the labour movement. Criticism of police handling of an industrial dispute at Port Hedland in 1969 flowed directly to the Western Australian Police Union – which responded a short time later by withdrawing from the state Trades and Labour Council. By this time police in most states were receiving both bouquets and brickbats from a public divided by the Vietnam war protests.

In spite of the tension there were still the pragmatic rewards from being part of a strong labour movement during a time of mixed fortune for unions. Bob Hawke's strong record as an industrial advocate and then President of the ACTU was vital in bringing the Australian police unions back into the labour fold during this time. Such was his reputation that the Victorian Police Association resolved in 1969 to seek an amendment to the Articles of the Association in order to make donations to the ACTU so that 'we could hold our heads high and help to pay the cost of wage claims and Mr Hawke's wages'³² – an ambitious resolution since it required the consent of a Liberal attorney-general. Legal opinion was divided on whether Victorian law allowed the Police Association to be connected to such a body, but eventually the government gave in to a circuitous proposal. The VPA would be allowed to affiliate with the Australian Police Federation – which in turn could be affiliated to the ACTU. In fact the Federation had withdrawn from the ACTU in 1967 over growing conflict with other unions, and the costs of affiliation. The VPA however signalled to the Police Federation that it would only join that body if the Federation would re-affiliate to the ACTU.³³

Affiliation with the labour movement was one thing, and in the context of arbitration understandable. How did Labor governments respond to the police unions? In spite of Halliday's 1947 comment on the generally conservative approach of Labor governments to police conditions, the Victorian and other police had good reason by the 1940s to thank Labor governments. Labor in Queensland had secured the legality of the police union, given it a place in the industrial relations firmament, and granted it an appeal board with union participation. In Tasmania the surprise victory of Labor in the 1934 state election was followed soon after by the announcement of a policy of 'Preference to Unionists' in the administration of promotions and transfers of police³⁴. The Victorian Association won handsomely in the favourable post-war climate when John Cain (the first) was brought to power. Not only was there now a government oriented to enhancing the position of the labour movement, but the minister responsible for police was William Slater the honorary solicitor for the Police Association. The police quickly got a classification board, an independent discipline board, improved long-service leave provisions, a weekly rest day, and a repeal of the restrictions on the Association affiliating with a police federation.³⁵ The links between the police unions and the labour movement seemed natural, and they seemed to work.

³² *VPJ*, Nov 1967, p. 127.

³³ *VPJ*, Mar 1971, p. 279.

³⁴ *Tasmanian Police Journal [TPJ]*, August 1935, p. 4

³⁵ R. Haldane. 1986. *The people's force: a history of the Victoria Police*. Carlton: Melbourne University Press., pp. 233-4.

But there are few long and happy marriages in politics, and the seemingly natural association of police unions and Labor was always fragile. It could be shaken by the changing political and industrial climate, by the tardiness of governmental decision-making, by the emergence of competing priorities, in general by those perennials of politics – who gets what, when and how. So it was that when reformist Labor governments, or even reformist non-Labor governments, took power from the mid-1970s the seeds were sown for a continuing harvest of issues which would drive the unions away from Labor, or rather away from the government in power. It is not even a paradox to observe that in one place the police union takes on the Labor government, whether Wran in NSW from 1979 on or Goss in Queensland in 1995-6, or Field in Tasmania in 1991, while in another, such as with Greiner in NSW in 1991-2 or Kennett in Victoria in 1999, it takes up arms against a non-Labor government. In spite of the long heritage of police links to the labour movement, there is no natural association with either side of politics. That heritage remains alive, as we could see when the Victorian Police Association finally affiliated with Trades Hall in 1998. At its base this link is pragmatic, rather than ideological. But its more vital message I think is that it signals how much police became like other workers in the course of the twentieth century, expecting similar entitlements, but also subject to much the same pressures when political and economic change brings workplace change. It may not be surprising then that under such pressures the Queensland police union sought through the Mundingburra MOU to obtain a measure of union security that was starting to disappear in other workplaces – and that it even extended its ambit to a claim for a right to strike.

Commissioners and unions

If the no-strike clause attracted little attention in the MOU debate, that was doubtless in part because its repeal was seen as too outlandish even by the all too willing political signatories to the document. Not so with the claims of the union to have a major say in the structure and appointments of senior administrators. It is fair to observe that Cooper was uncomfortable with the naming of assistant commissioners as the potential beneficiaries of an early retirement – hence the names were suppressed when he first forwarded the document to the CJC, and in any case he signalled that their positions were simply to be made part of an overall review – nothing exceptional in that these days for an incoming administration dealing with people on contract. The union's claim to have a say in the appointment of a future commissioner was more readily 'agreed'. Behind this highlighting of a union concern over the senior personnel of a department is a long history of often highly personalised conflict between police commissioners and unions.

The favoured tactic of unions unhappy with what the department is doing is the motion of no confidence, preferably passed at a large public meeting with much media coverage. In 1999 Victoria's Police Commissioner Neil Comrie joined the long line of Australian police commissioners who have earned this distinction. Comrie replied in kind, telling the Victorian public through the columns of *The Age* that the Victorian Police Association from which he had recently resigned had joined the 'guardians of

mediocrity'.³⁶ In spite of the predictably frequent tensions between unions and commissioners over the years the subject has not received a lot of attention – with the exception of Jill Bolen's recent study of the Whitrod era in Queensland which documents the unions' undistinguished role in those years, with their no confidence motions and direct links to the Premier³⁷. Behind and beyond the reality of recent events in Queensland, there are histories of considerable interest in the struggle between unions and commissioners in most Australian jurisdictions. The Mundingburra MOU's interest in the appointment of future commissioners was not unprecedented – nor, given the inherently unstable and distrustful relations between unions and managers, is it without historical rationale. To appreciate the issues at stake we can probably do worse than go back to some of the most celebrated but now little known administrative and political contests over who runs the police.

Two incidents I want to examine – or rather two series of incidents, affecting the industrial freedoms of police unions to organise, the political relations of police, and the administrative freedoms of commissioners to direct police operations and resource allocation. In both cases commissioners sought to turn back the rising tide of assertive unionism – with different levels of success in the short term but failure in the longer run. The examples help to show how and why Australian police unions came to be central to the organisation of policing – and what political conditions underlay that.

My first case is that of Victoria. I have mentioned before that the strike of the Melbourne police in 1923 was largely a strike of the non-unionised. But the Victorian Police Association was in any case something less than its autonomous and noisy counterparts in NSW or Queensland. Formally the Victorian union was what is known as a representative association – to all intents and purposes this was a company union, with its structure defined in statute, and constraints modelled largely on the Police Federation of England and Wales³⁸. This did not mean however that Victorian police had surrendered altogether the notion that they might have something more like a union.

So it was that just as Melbourne had a memorable police strike so it became home in the following years to a bitter battle between would be police unionists and a recalcitrant chief commissioner. Like some other commissioners of his era, Sir Thomas Blamey was appointed in 1925 on the basis of a distinguished military career during the First World War – lateral entry at commissioner level was still possible in Australian police forces in the 1920s and 1930s though rare for half a century after that. From the beginning, for the duration, and in the aftermath of his service Blamey's leadership of the police was contentious. The substance of disputes around his office related in part to rumours of corruption, allegations of which prove difficult to investigate historically because so many of his administrative files were destroyed, to a degree quite unmatched in the history of the Victorian force according to its historian³⁹. But

³⁶ *The Age*, 19 Jul 1999

³⁷ J. Bolen. 1997. *Reform in policing: lessons from the Whitrod era*, *The Institute of Criminology Monograph Series*. Sydney: Hawkins Press.

³⁸ See especially the annotations to *[Vic] Police Pensions Act 1923*, ss. 29-30.

³⁹ Haldane, *The people's force*, 1986, p. 210.

administrative decisions flowing out of Blamey's office also helped to sustain an atmosphere of conflict that was embodied in his relations with the Victorian Police Association. Blamey set out to crush it in the late 1920s and appeared successful to a degree unmatched elsewhere in Australia.

Conflict between Blamey and the Association centred on two issues that were the preoccupation of the police unions at this time – pensions, and promotions. Unfairness in pension entitlement provisions had been a grievance in the 1923 strike. The government legislated to address the situation within weeks of the strike – but simultaneously sought to contain the Association in future by curtailing any potential for it to comment on political matters or associate with other political or industrial organisations⁴⁰. This was not enough to curtail the Association's agitation over a cause dear to Blamey's heart, the system of promotions. Blamey wanted promotion on merit, rather than seniority. It was an issue which continued to divide unions and police managers for most of the remainder of the twentieth century. The unions favoured seniority promotion, as a measure of security to individual members, and as a means of avoiding nepotism in administration – when the consequence was that too few positions would be available to satisfy the promotion aspirations of the rank and file queued up for their turn, the unions in turn sought to reduce the age of retirement. The commissioners, or the more reformist of them, always pursued the cause of merit promotion.

In October 1929 the matter came to a head when the Victorian Police Association contemplated running a political campaign in the forthcoming state election to oppose the promotion changes sought by the Chief Commissioner. In the November issue of the Association's journal the secretary (not a police officer himself) included material related to an intended campaign to lobby all candidates in the coming election. Blamey immediately called in the president of the Association, a serving officer, and read him a memorandum concerning the illegality of police engaging in political actions. Pre-empting a response from the president that the secretary had been acting independently without the knowledge of the executive, Blamey then quoted the Masters and Servant Act to the effect that ignorance of the employer (in this case the VPA Executive) would not absolve them from responsibility for the secretary's action.

Faced with Blamey's hostility, and following independent legal advice from the sympathetic labour lawyer Maurice Blackburn, the Association backed down from its proposed campaign. Yet the degree to which a strong line of political advocacy was already in the late 1920s on the police union agenda was evident in the detailed exposition to members of what had derailed the lobbying campaign:

Members...will see by copies of official correspondence produced in this issue that the Association has not the right to do what was originally intended - namely, endeavor to find out definitely, by circular letter, just what candidates were prepared to do by way of assisting us if they were elected as members of the Legislative Assembly at the forthcoming election. ...[O]ne is not anxious to jeopardise, departmentally, the interests or careers of individual members of either the Executive or of the

⁴⁰ [Vic] *Police Pensions Act 1923*, ss. 29-30, continued in *Police Regulation Act 1928*, ss. 81-82.

Council, and for that reason and that reason only prospective Members of Parliament have not been circularised as intended.⁴¹

In spite of the Association's backdown, in the year after the election relations between the Association and the Chief Commissioner worsened dramatically. Victoria had a Labor government, one sympathetic to the Police Association, yet Blamey appears to have been determined to smash the proto-union. He found his weapon in the fact that the Association had a secretary who was not a serving police officer – such a state of affairs appeared to call into question the legality of police membership in the Association⁴². Working with officers sympathetic to his administration Blamey also began white-anting the organisation and there was a dramatic fall in the Association's membership – from 1,400 to 800 within a year of the election⁴³. Yet the Association executive continued its determined assault on new promotion regulations. These implied that even long-serving officers would have again to sit an examination in order to get on the promotion list.

As Commissioner in 1930, Blamey faced not only the hostility of a union executive that had played a very public role in resistance to his new promotion regulations. A personal hurdle was that his five-year term had expired – the new Labor government did not renew his appointment but instead left it open to him to apply again, at a salary level reduced in the conditions of economic depression by £500 p.a. It was publicly mooted that the government hoped and even expected that he would not apply. In the interim Blamey pursued the Association, and especially its non-police secretary. In the same week that it became known that Blamey would not be automatically re-appointed, *The Age* reported that Blamey had directed an investigation against the Association Secretary for 'attempting to spread disaffection amongst members of the force' – a brief had already gone to the Crown Solicitor who, according to the regulations, could institute proceedings without the approval of the Attorney-General⁴⁴. The clarification was significant – for the new Attorney-General, William Slater MLA, had been the Association's Honorary Solicitor for the previous five years.

By this stage the conflict over the position of the Commissioner and the future status of the Association had become very public, and the subject of newspaper editorials. Supporting Blamey, the conservative *Argus* was trenchant. Attacks on Blamey were said to be part of a political campaign, of which the recent trade union and Labor Party criticism of police protection of strike breakers at the wharves, was typical.

The Labor regime has been marked, too, by the increased boldness of the Victorian Police Association in seeking to interfere with the Chief Commissioner's control of the force. This organisation has not scrupled to attempt to exercise political influence, even to the point of direct disobedience of the law. Its efforts to overawe candidates at the State election in November last on the question of police promotion were continued in face of the Chief Commissioner's warning. This was but one episode in the association's sustained campaign to subvert discipline in the force. There has been a determined attempt by the disruptive influences in the police force to dictate a policy of promotion at variance

⁴¹ *VPJ*, Dec 1929, p. 183 – *contra* Haldane, *The people's force*, 1986, pp. 203-4 this appears to make clear that, formal lobbying did not take place.

⁴² In fact Blamey had from his first months in office been targeting this Achilles' heel of the Association's executive structure – Haldane, *The people's force*, 1986, p. 202.

⁴³ *Argus* 15 Jun 1930, as cited in *VPJ*, Aug 1930, pp. 23-4.

⁴⁴ *Age* 11 Jul 1930, cit in *VPJ*, Aug 1930, p. 22.

with that desired by the Chief Commissioner, and members of the Labor Ministry have been too ready to lend their aid to these mischievous [sic] activities.⁴⁵

In such a volatile context it may not be surprising that Blamey's eventual successful application for a new appointment resulted in his bringing Association matters to a head. Not without some supporters within the Association, Blamey aimed to replace the existing executive and restructure the organisation along lines that made it appropriately subordinate. His proceedings were ruthless – but also an exercise in brinkmanship. He sent one Association executive member back to uniform duties in Mildura, and proceeded with the prosecution and eventual conviction and imprisonment of the Association Secretary for attempting to subvert police discipline. Then came a directive from the commissioner to members of the Association to resign their membership from what he said was now an illegal body. This directive brought him into direct conflict with the government - at the Association's request, the chief secretary in turn directed Blamey to withdraw his direction to the force. The political injunction was only temporary, pending court resolution of the legality of the existing Association with its non-police secretary. When one court and then another ruled against the Association the game was up. In the meantime Blamey had organised a group of loyal officers to take over the Association under a new understanding that effectively subordinated the Association to his authority⁴⁶. 'Eventually', concludes Haldane on this episode, 'the new Association returned to its "old" mould and became a genuine union of employees, but that was not for many years, long after the iron-fisted general had left the force'⁴⁷.

Blamey's tactics with the Association make sense in the light of his military background. While it was claimed by his media supporters, like *The Argus*, that he had been a supporter of the Association, that had only been while it was effectively mute. When a contentious matter like promotion came up, the distance between the union's conventional affection for seniority as a pre-eminent criterion and Blamey's wish to dispose as he thought best, provoked sustained and very public conflict. Notably his determination to crush the old Association came in the wake of its unashamed entry into the political arena, attempting to achieve its aims through a favourable electoral outcome in 1929. The familiarity of these proceedings to those who have witnessed police union conflicts with government in the last 20 years suggests that this kind of politicisation arises out of, indeed is conditioned by, the institutional conditions of policing rather than the development of some late century crisis in policing and the politics of law and order. That such conflicts could emerge in 1930 is a striking reminder of the longevity of a police union politics embedded in a peculiar institutional strength of Australian labourism. That the 'union' seemingly lost out on this occasion may be just the exception that proves the rule. In Western Australia at the same time an equally unhappy Commissioner, sought to use similar tactics, of transfer, and the creation of internal division in the ranks of the union - but without the same success. Commissioner Connell's transfer tactics in 1930 were admittedly

⁴⁵ *Argus*, 16 July 1930, cit in *VPJ*, Aug 1930, pp. 27-9.

⁴⁶ Based on the correspondence and memos published in the *VPJ*, July 1930- February 1931. See also Haldane, *The people's force*, 1986, pp. 204-7.

⁴⁷ Haldane, *The people's force*, 1986, p. 207.

more muted, but nonetheless contested by the union - and his attempts to establish a separate officers' union came to naught in the face of police union opposition, pressed on the Labor government in 1932⁴⁸.

Blamey's militaristic approach to the Police Association was in many ways the reaction of an outsider appointed to the police. But not only that. A key thing may be seen as his personal disposition - yet the frequency of similar conflicts between Commissioners and unions in the inter-war years suggests also that there were structural and procedural issues at work, including a working through of the new world of policing administration in an age of unionisation. These factors are particularly evident in the history of Blamey's near contemporary in NSW. William MacKay came to his post in 1935 from within the ranks of the force. Initially his approach to the police union in that state was congenial. In his first address to an Association conference he boasted in 1935 that he had been among those who had drawn up its rules in 1920⁴⁹. Yet MacKay's style of administration, during a turbulent and controversial period of NSW police history, leaned towards a conception of the force as more akin to that of a military body. This was evident in an extraordinary episode during the Second World War when MacKay tried to do a Blamey on the NSW Police Association, and lost.

In 1941 Constable Oldfield of the NSW police sued his supervisor Inspector Keogh over a report reflecting on his competence. Oldfield claimed that Keogh had said he was a 'drone and only waiting for pay day', although Keogh's written report contained the less defamatory statement that Oldfield 'is at home whilst he is sitting on a chair at the side of the dock in the Court, but out on the street he is useless'. In May 1941 the constable achieved satisfaction in the NSW Supreme Court. But on appeal to the Full Court the judgment was reversed. The union had backed Oldfield's suit - and paid heavily for its support⁵⁰.

The outcome of *Oldfield v Keogh* was taken by Commissioner McKay as a strong vindication of the probity of his senior personnel - that at least was the implication of his fury when he charged in the January 1942 official *Police Gazette* that the Association, having trumpeted Oldfield's victory in the first court, had fallen silent on the findings of the Full Court. Notoriously, MacKay was in fact wrong - the Association had already printed the adverse judgment in a supplement to its *Police News* four months earlier. Yet when the tough-talking Association secretary, Charles Cosgrove, ridiculed MacKay's mistaken assertion, the commissioner responded by taking on the union's executive. Cosgrove was a non-police employee of the Association, but the executive were all serving police officers, based in Sydney stations. As Blamey had done in 1930, MacKay resorted to the tactic of punitive transfer. All members of the Association were given temporary transfers to country stations remote from Sydney. The dispute escalated overnight into a *cause celebre* for the NSW labour movement. In the following days sympathetic Labor backbenchers lobbied the new state Premier who in turn directed MacKay to rescind the transfers. Within a short period

⁴⁸ *WAPN* Jul. 1930, p. 3 re transfers, in spite of union understanding with government; *WAPN* Oct. 1930, pp. 1-3; *WAPN*, Aug 1932, p. 5; *WAPN*, May 1933.

⁴⁹ S. Brien. 1996. *Serving the Force: 75 Years of the Police Association of New South Wales*. Sydney: Police Association of New South Wales., p. 65.

⁵⁰ *Oldfield v Keogh*, [1941] 41 *NSWSR*, 206-215.

of time the new government had not only succeeded in reversing a Commissioner directive on the disposal of his police officers, but also negotiated MacKay's temporary removal from his office to a Commonwealth war-time post⁵¹.

The commissioner's humiliation was not ended by his temporary secondment to the Commonwealth job. On his return a year later it appeared that MacKay had lost little of his combative approach to relations with the union - and the union had not forgiven him his tactics of 1942. Further defeats for MacKay followed. They are especially pertinent to our themes here since they arose as matters of central importance to the constitutional and legal, as well as administrative, frameworks of NSW policing. In their resolution the Association again triumphed, and demonstrated the importance of a close link with the government of the day.

MacKay's troubles in 1943 originated in an extraordinary saga of the minor courts that brought into play some of the most powerful people in NSW. In January 1943 it was reported that two constables had been suspended following the arrest at a city park toilet of a man identified initially as Charles McNally, on a charge of indecent exposure. Following the arrest the two constables had been called into the commissioner's office for interview, the files including fingerprints had been removed to Police Headquarters, and the charge was dropped. Within a few days the police concerned had been suspended and the Police Association executive was involved. On 21 January 1943 the Association called for a Royal Commission to investigate all the circumstances regarding the dropping of the charges, and the suspension of the constables. The latest actions of Mr MacKay, charged the secretary, were 'a serious threat to all members of the force'⁵². The Association pressed on against MacKay, writing to all state parliamentarians about its concern that the commissioner was attempting to 'discredit the constables with the object of protecting a man in a highly placed position'⁵³.

The Association's pressure was quickly rewarded. The Premier, W J McKell, called for a report from MacKay. Within a week state cabinet had issued a directive to MacKay to issue a summons against 'McNally'. The Association's request for a Royal Commission was rejected, but only after a cabinet discussion which the Premier said had taken a 'whole afternoon'. MacKay's initial response threatened to bring him into open conflict with the government, when he indicated instead that the 'Police Act imposes upon me the obligation to protect innocent members of the public against abuse of a policeman's power or any other abuse'. Three days later, after a meeting with the Premier, MacKay agreed to issue the summons⁵⁴. In the meantime the Association was building its case against MacKay, claiming on 29 January that a deputation to the Premier would list a number of cases to 'support the executive's belief that Mr

⁵¹ This account draws on S. Brien. 1996. *Serving the Force: 75 Years of the Police Association of New South Wales*. Sydney: Police Association of New South Wales., pp. 77-83, as well as *NSWPN* of the time, and *Oldfield v Keogh*.

⁵² *Sydney Morning Herald [SMH]* 21 Jan 1943, p. 7

⁵³ *SMH*, 22 Jan 1943, p. 7

⁵⁴ See reports *SMH*, 28 Jan -1 Feb 1943.

MacKay, 'by reason or his impulsiveness and arrogance, was not fitted temperamentally to control the Police Force'.⁵⁵

The identity of "Charles McNally" was soon known. At the summons hearing on 1 February, his barrister, W R Dovey KC, revealed that "McNally" was in fact Clarence Sydney McNulty, and that he was not a 'clerk, 43 years old' as on the charge sheet, but was Editor-in-chief of the *Daily Telegraph*. McNulty subsequently escaped conviction, an unusual outcome in these cases during these years, for it was revealed subsequently that the arresting constables had made some 200 similar charges around the city in the previous year with all resulting in guilty pleas or verdicts. In a sequence of subsequent hearings it became clear that MacKay had dropped the charge after being alerted the same night to what had happened. After release from the police station McNulty had gone to MacKay's home, together with the newspaper's proprietor, Frank Packer - according to Mackay's own evidence in a later libel hearing the commissioner and the paper owner knew each other as 'Frank' and 'Mac'⁵⁶.

In the aftermath of the arrest MacKay had already ordered a departmental inquiry into the policing practices of the two constables concerned. Thereafter for at least two years the Association was dedicated to a political and legal pursuit of the case against MacKay. With friends from the past now in parliament, such as one-time Association solicitor W F Sheahan, the police union was in a strong position to push the case against MacKay. At the Association's annual conference in 1943, alongside a proposal that the Association should affiliate with the NSW Trades and Labour Council went a motion calling on the government to repeal those laws and regulations that were alleged to give the Commissioner dictatorial powers. Sheahan welcomed the motion and 'hoped that before the end of the present Parliament the Premier would take appropriate action for the repeal of that portion of the Police Regulation Act which dealt with the position'⁵⁷. His confidence that government might do something was not ill-informed. During the McNulty episode government ministers had been reported to be surprised by MacKay's attitude to the directive to issue a summons. One had suggested that 'if Mr MacKay continued to take no action the Government would have to consider whether the Executive had power to suspend Mr MacKay under the Police Regulation Act'⁵⁸.

Direct approaches to government and backbenchers over the statutory powers of the commissioner and other aspects of police administration were one means by which the Association pursued MacKay. In court MacKay would later allege that the Association had always been agitating with parliamentarians against him⁵⁹. Another was to fund those legal challenges to MacKay that arose from the McNulty case. The Association funded appeals against the dismissal of Grigg and Carney, following the outcome of the departmental inquiry into their actions leading up the McNulty arrest. Its president was the rank and file

⁵⁵ *SMH*, 29 Jan 1943, p. 7.

⁵⁶ *NSWPN*, Jun 1945, p. 28 reporting proceedings in *Grigg v Consolidated Press*, 1945.

⁵⁷ *SMH*, Apr 14, 1943, p. 9.

⁵⁸ *SMH*, 29 Jan 1943, p. 7.

⁵⁹ *NSWPN*, Sep 1945, p. 34.

police representative on the Appeal Board, which found 2-1 in favour of Grigg and Carney, with the commissioner's delegate in the minority. Immediately following this favourable outcome, the Association explored a further legal path to drive home its dissatisfaction with MacKay. In what turned out to be a costly and internally divisive move, the Association executive agreed, but only on the casting vote of the president, to fund a defamation action by Constable Grigg against MacKay. Denied success in a jury trial, but still with Association support, Grigg appealed to the Supreme Court, again with union funding, and again without success. By this stage the enormous legal costs of such cases were affecting the Association's finances, and became a matter of dissent at the 1945 annual conference, when Cosgrove was forced to defend the £1100 pounds already spent in supporting the two police in their appeals and legal challenges.⁶⁰ When the bills mounted to £2000 a disgruntled Association member took the six members of the executive to court - only to fail himself, when Judge Roper found the Association had acted lawfully in supporting Grigg in his legal action over 'the allegedly libellous statement purported to have been made by the chief executive officer and head' of the police force⁶¹.

Apart for demonstrating the apparently litigious disposition of a good number of NSW police in the 1940s, the McNulty case and its aftermath constituted an exemplary instance of a deteriorating relationship between commissioner and the police union. Beyond the posturing and the more serious attempts to seize high ground, both parties in this relation were struggling over the prerogative rights in policing. MacKay's administrative style had become increasingly authoritarian, and politically insensitive, not to say myopic. The Police Association executive had a virtual open line to the ruling Labor Party, and the government did not hesitate to make publicly known its dissatisfaction with the Commissioner. Viewing Association links of this kind as a challenge to his authority, MacKay here as in 1942 was understandably affronted, but limited in his power to combat the union.

Regardless of the merit of his actions, or those of the officers he had tried to dismiss, the entire episode signalled the transitions in Commissioner authority since the turn of the century. Not only were appeal rights now firmly established, and effective in overturning departmental and Commissioner rulings. Now also a Commissioner appeared quite vulnerable to political pressures exerted by the police union, for the good or bad as the case might be. In the McNulty case the game had been played out on territory which almost ensured a significant loss to the Commissioner - his associations with a powerful elite could easily lead to suggestions of interventions against the course of justice. A police union with an independent voice, especially one as loud as that of Cosgrove, was now powerful enough to operate as a significant constraint on the Commissioner's freedom to do as he pleased.

⁶⁰ *NSWPN*, Jun 1945, pp. 4-5, 11-13.

⁶¹ *NSWPN*, Dec 1945, pp. 27-30. Sgt Stevens appealed this Supreme Court decision to the High Court, where he again lost, with Latham J dissenting - see *NSWPN*, Dec 1946, pp. 42-8.

Conclusion: the politics of the police unions

I have dwelt at some length in this lecture on some earlier histories of police unions in Australia. The intention has been to suggest that far from representing a departure in police union political aspirations and influence, the Mundingburra MOU was something for which history had prepared the QPUE. The specific agenda of the MOU, its making, and the circumstances of its being kept secret were the product of more local histories. But its rationale as a document and a strategy shares a lineage with the ambitions and privileges of Australian police unions. And its shaping makes sense when we grasp the changes in police and criminal justice administration in recent years. Let me try to summarise here the elements that make up the moment of the Mundingburra MOU, not so much in its particularity but in its possibilities, its aims and its tactics.

First, the twentieth century history of police administration has made police more like other workers in their rights and aspirations. Police expect to be able to share the same rights – and comparable pay and conditions as other workers. The employer of public police, the government, is as much a target for the demands of these workers as any other employer. As the ideological and institutional supports for that framework have crumbled during the 1990s, so many police unions have been placed on the defensive.

Second, governments have long ago conceded that police were no different to other workers – they are entitled to collective representation through a union. In Australia especially that concession embodied in most jurisdictions a recognition that police unions would be entitled to an autonomy characteristic of labour unions. And the Australian industrial relations framework of compulsory arbitration provided, for those police unions which were admitted to it, an exceptionally solid institutional support.

Third, from the moment when governments recognised a police right to organise, in the few years before and after the Great War, Australian police unions have cultivated political friends and influence. For much of the twentieth century the unions were by inclination and political pragmatism more likely to cultivate those relations on the Labor side of politics. But governments of all colours have proven to the police unions to be fickle and to be worthy targets of political campaigns when elections came around. When the general secretary of the NSW Police Association warned in 1923 that police were determined that ‘triflers will be dealt with’, he was referring not to street larrikins, but to the politicians who, he said, ‘juggled them as pawns in the game of life’⁶². The police unions have been on the political trail ever since.

Fourth, police unions have long aspired to affect the fundamentals of police organisation – especially with respect to limiting the powers of a commissioner and even to having a say in the appointment of a commissioner and other senior officers. Indeed the police unions have long sought to influence the appointment of commissioners, just as did the Queensland union in its wish-list presented to the Opposition

⁶² *NSWPN*, Jan 1923.

in January 1996. Most governments have politely acknowledged the advice offered, but like Don Dunstan in 1971 have not offered any guarantees⁶³.

Fifth, to the extent that the law and order card was played in the Mundingurra election, it was nothing more than a secondary issue, like most of the cases in which police unions have sought to use it. There have been exceptions – especially the major campaigns run around the time of the Commonwealth's Crimes Investigation Bill in the early 1980s, or the NSW protests in 1979-80 against the repeal of the summary offences act. In such cases the police unions have figured that changes in the law will significantly affect police operational discretions. But more commonly the politics of law and order played by police unions have been at the service of more mundane concerns, especially numbers of police, and pay and conditions. Not all have been as crude as that of the QPUE's Mundingburra claims about threats to public safety, a kind of campaign which runs the risk in the longer run of crying wolf too often.

None of these historical conditions that help explain Mundingburra should be taken as reasons for avoiding the difficult questions raised by the experience. But most of the issues relate to the protocols of political life, and the skill with which incoming or aspirant governments in a relatively open democracy can handle the doubtless exhausting array of policy issues and special interests.

A more direct implication of the argument I have been advancing is that as some of the fundamental conditions on which police union power has been built change, so we might expect significant changes in the police unions' function and role in coming years. But it would be wrong to anticipate that the changing structures of workplace and industrial relations will of necessity speedily diminish the influence of police unions. There are few occupations which can still boast rates of unionisation approaching 100 per cent. While police unions worry about the commitments of their membership they still start from a position of exceptional advantage compared to most comparable organisations. And one of their strongest advantages is indeed a function of the occupation of policing - technology can and does supplement policing but it remains a labour intensive activity. As long as governments are required to assert, as they do so repeatedly, that this, or that, state has the finest police force in the world, so long will police unions continue to play an influential role in the political process. The trick is to ensure that the other institutions of civil society are strong and watchful enough to ensure that we do not end up thinking that 'police unions' equals 'police'.

⁶³ *SAPJ*, Jun 1971, pp. 3-4.