

The Implications of the Macpherson Report Into the Death of Stephen Lawrence

The Stephen Lawrence Inquiry

In Britain on 22 April 1993, a black 18 year old, Stephen Lawrence, was stabbed to death by five white youths in an attack, the brutal and unprovoked nature of which might only be understood in terms of racial hatred. This aspect alone raised the vexed issue of social responsibility for the 'subculture of obsessive violence, fuelled by racial prejudice and hatred' (Macpherson 1999:2.18) which infects multi-ethnic communities. The prolonged investigation by the Metropolitan Police Service was ineffectual with the result that sound evidence was 'conspicuous by its absence' (Macpherson 1999:2.2). The private prosecution launched by the Lawrence family in 1996 also failed, leaving the five prime suspects effectively exempt from criminal liability (Macpherson 1999:2.3, 2.4).

In 1997, the Inquiry was established both to inquire into 'matters arising from the death' and to 'identify the lessons to be learned for the investigation and prosecution of racially-motivated crimes' (Macpherson 1999:2.8). The findings of the Inquiry were not restricted to the conclusion that 'professional incompetence' and 'institutional racism' had marred the specific police investigation in question (Macpherson 1999:46.1), and its further conclusion that institutional racism exists in police services and other institutions throughout Britain, has dominated debates in and about British policing.

The Findings of the Inquiry

i. Institutional Racism

In broad terms, the Inquiry defined 'institutional racism' as :

The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people (Macpherson 1999:6.34).

In clarification of this definition, the Inquiry clearly points out that institutional racism encompasses both 'explicit manifestations of racism at direction and policy level' and 'unwitting discrimination at the organisational level' (Macpherson 1999:6.15). Further, that the type at issue in the Inquiry is the 'systemic tendency that could unconsciously influence police performance generally' (Macpherson 1999:6.5). In explanation of this sub-category of 'unwitting racism', the Inquiry stated that such racism might arise from 'lack of understanding, ignorance or mistaken beliefs', from 'well-intentioned but patronising words or actions', from 'unfamiliarity with the behaviour or cultural traditions of people or families from minority ethnic communities', from 'racist stereotyping of black people as potential criminals or troublemakers', and from 'uncritical self-understanding born out of an inflexible police ethos of the "traditional" way of doing things' (Macpherson 1999:6.17). With specific regard to the police force, the Inquiry noted that such racism would thrive in its 'tightly knit community' in the absence of collective mechanisms for detection and

reproach (Macpherson 1999:6.17) and that even the 'colour blind' approach fell short of the adjustment of policies and methods required for policing in a multi-ethnic society (Macpherson 1999:6.18).

The Inquiry has commanded approbation for accepting this definition of institutional racism and for applying it to the police (Waddington 1999:1.1). In its treatment of 'unwitting' racism, however, the Inquiry has been criticised for collapsing together 'systemic and subjective racism' (Yuval-Davis 1999:1.5) and for failing to 'dissociate the unintentional effects of procedures from procedures that relate to the exercise of judgments and agency' (Anthias 1999:2.9). Explained in simpler terms, such critics felt that the Inquiry portrayed institutional racism as the strict enforcement of 'the law' with unfortunate results or as the occurrence of regular but unintended individual failures of police without favour, rather than as conduct inherent to the learnt 'assumptions' and 'strategies' that guide the exercise of discretion by the police as 'active decision makers' (Chan 1997:74-75)¹. Whilst the use of the word 'unwitting' could be viewed as a semantic rather than substantive fault with the Inquiry's reasoning, this word had the unfortunate consequence of seeming to absolve both the officers and the system from responsibility and accountability and therefore, in this context, semantic differences must be seen as substantial.

ii. Professional Incompetence

Police incompetence was identified by the Inquiry in the failure to attending officers to render First Aid, the lack of direction and documentation in the initial response, the lack of information and sympathy provided by way of family liaison, the inadequate supervision and perpetration of errors and assumptions by the superior officers, the poor planning and carrying out of surveillance, the failure to logically and thoroughly pursue lines of inquiry, and the inaccuracy and insensitivity of review procedures (Macpherson 1999:46.5-46.23). Racism was seen as integral to the instances of incompetence identified.

In identifying the underlying cause of this array of faults as professional incompetence rather than as related to occupational culture, the Inquiry would seem to have misunderstood, or at least not sufficiently probed, the link between the instances of incompetence it identified and the more fundamental problems of British policing. While the Inquiry treated the exercise of police discretion in the procedural terms of standards and management, academic analysis of policing had indicated that the incompetence identified by the Inquiry was best understood in the systemic terms of 'interactions between the social and political context of police work' and 'the institutionalised perceptions, values, strategies and schemas' (Chan 1997:92). Three perhaps more appropriate and certainly broader interpretations could see the instances of incompetence as symptomatic of police murder investigations (Innes 1999), as inherent to the exercise of police discretion in accordance with notions of 'respectability' (Waddington 1999), or as co-extensive with previously identified miscarriages of justice. Firstly, whilst not suggesting that racism had no effect on the investigation (1.3), Innes had explained police suspicion of Stephen Lawrence's friend Duwayne Brooks, who was arrested at the scene (Macpherson 1999:5.11-5.12), as due to the knowledge that the murderer was 'more than likely' known to the victim (Innes 1999:2.7-2.9); the standard of command and coordination in the initial response (Macpherson 1999:11.36) as due to conflicting police responsibilities to investigate and protect the scene (Innes 1999:3.7, 3.9); the failure to appropriately evaluate

1 Note that Chan 1997, unlike other comments discussed, was not directed at the Inquiry, but was in fact based on independent research conducted into the NSW Police Service and was published prior to the report of the Inquiry.

certain information (Macpherson 1999:13.24-13.25) as due to the difficulty of assessing the reliability and usefulness of the large amounts of information coming from various sources in a short period of time (Innes 1999:4.10, 4.13); and, understaffing (Macpherson 1999:32.16) as due to the exorbitant resources needed by such investigations (Innes 1999:5.3). However, the force of this argument is perhaps lessened by the fact that police find suspects for 90% of white murder victims but only 60% of black murder victims (Kushnick 1999:2.7) and that few 'professions' would be accorded sympathy or leniency for such difficulties. Secondly, having dismissed the law and the 'canteen' subculture as satisfactory explanations for the manner in which police exercise discretion (Waddington 1999:5.2, 3.1-3.2), Waddington argues that police must have recourse to 'prevailing standards of respectable behaviour' and that the widespread perception of ethnic minorities as 'problematic marginal sections of the population' denies such groups respectability (Waddington 1999:5.2-5.6, 7.5). Interestingly, this argument both fits within revamped formulations of institutional racism and provides for the possibility that racist incidents, like domestic violence, might receive greater police attention if the requisite political pressure is applied (Waddington 1999:10.3). Thirdly, Zuckerman's argument that police investigations face the 'cognitive obstacles of bias ... in favour of [the] starting hypothesis' and evidential 'distortions' due to the 'expectancy factor' could explain why the initial 'erroneous police conclusions' and assumptions were perpetuated throughout the investigation (Zuckerman 1993:5-6). In short, the Inquiry's narrower interpretation tends to focus to its detriment on the digressions rather than the commonality in the exercise of police discretion and therefore risks being undermined by the 'few bad apples' defence.

The Recommendations of the Inquiry

The recommendations of the Inquiry with regard to policing were essentially four-fold and directed both at 'tightening the rules' by modifying police accountability and treatment of racist incidents and at 'changing the culture' by modifying police recruitment and training. Firstly, with regards to police accountability, the Inquiry recommended the review of external and internal rules, the independent investigation of police officers, and 'disciplinary proceedings' for 'racist words or acts' on the understanding that 'such conduct would usually merit dismissal' (Macpherson 1999:47.29, 47.58). Secondly, on the subject of police treatment of racist incidents, defined as 'any incident which is perceived to be racist by the victim or any other person' (Macpherson 1999:47.12), the Inquiry recommended codes of practice for a 'comprehensive system of reporting and recording of all racist incidents and crimes' and 'equal commitment' to the investigation of 'crimes and non-crimes' (Macpherson 1999:47.15, 47.13). Thirdly, in relation to police recruitment, the Inquiry recommended 'targets for recruitment, progression and retention' of ethnic minority officers to ensure that 'the membership of police authorities reflects so far as possible the cultural and ethnic mix of the communities which those authorities serve' (Macpherson 1999:47.64, 47.1). Finally, in regard to police training, the Inquiry recommended both specialised training for liaison officers and general training 'based upon the value of our cultural diversity' to develop 'full understanding that good community relations are essential to good policing and that a racist officer is an incompetent officer' (Macpherson 1999:47.23, 47.24, 47.31, 47.48).

i. Tightening the Rules

The 'tightening of rules as a means of controlling police discretion' could occur either at the internal, institutional level or at the external, legislative level (Chan 1997:50-52), as was recommended by the Inquiry. On the one hand, both the managerial and political making or tightening of rules to enhance police accountability were regarded by Chan as 'ignored or subverted' at the operational level, firstly, due to their failure to 'provide adequate guidance in terms of everyday police work' and secondly, due to their assumption that police organisations were 'bureaucratic and mechanical' so that 'changes in practice' could be brought about by 'changes in rules' (Chan 1997:62-63, 53-54). On the other hand, Fielding argued that change at the structural level of 'the legislative framework in which police are obliged to operate' could be more effective than change at the agency level of 'the culture and attitudes of police' and that Chan 'unwittingly' discounted her own evidence as to the effectiveness of change at the structural level (Fielding 1999:1,6). Fielding further argued that external structural change may be effective in giving victims recourse to the justice system for breaches of the law whereas internal structural change would be considerably less effective. Therefore, whilst the effectiveness of changing internal police codes of practice may undoubtedly be questionable, evidence presented by Fielding suggested that some benefit could flow from the imposition of accountability mechanisms through external legislation, though such benefit could by no means be guaranteed (Chan 1996:93).

Furthermore, the Inquiry's definition of racist incidents could justifiably be criticised for failing to locate such incidents within the general social phenomenon of racism directed towards ethnic minorities or indeed within any social or historical context (Chahal 1999:1.6). Based on the argument that members of the ethnic majority cannot be victims of racist incidents because their legal, political and civil rights are never threatened by such incidents, Chahal argues that the Inquiry's definition 'denies the racist element' and serves to confuse 'inter-racial incidents', which are not necessarily caused by 'race', with 'racist incidents', which are caused by 'race' (Boonerjea & Lawton in Chahal 1999:2.2, 2.4). The Inquiry has perhaps defined racist incidents too broadly, with the effect of diluting the focus on the inter-racial relations that suffer most from systemic stereotyping and discrimination.

ii. Changing the Culture

Changing the 'informal culture' of police organisation was recommended by the Inquiry in order to affect the exercise of discretion by police officers. Changing the culture through the sort of training recommended by the Inquiry could be undermined by the 'reality' of police work and the 'commonsense' of the police occupational culture (Brodgen in Chan 1993:57) or to 'confirm existing prejudices rather than lead to greater tolerance' (Southgate in Chan 1993:57). Indeed, such negative effects have been documented in relation to the 'Human Awareness Training' carried out by the London Metropolitan Police in the 1980s (Fielding 1999:1.8-1.10). Moreover, Hollingsworth (1992:42) has challenged the basic assumptions of cultural awareness training that the problem arises from 'the cultural difference of the "other" group' and that racist behaviour is due to 'ignorance and misunderstanding', since such assumptions locate the problem within the ethnic minority, not the system and such training is perceived by officers as the views of 'do-gooders' who lack the officers' insider understanding of the system. Furthermore, Chan sees such proportional recruitment of ethnic minorities as recommended by the Inquiry as 'unlikely' to impact on 'deviant cultural practices' since such practices were 'developed by street-level officers to cope with the demand and uncertainty in their work' (Chan 1997:61). Fielding, in contrast, argues that such recruitment is necessary in terms of the common law

perception of policing in order to avoid 'an unstable, poorly-grounded exercise of discretion' (Fielding 1999:2.6), since the emphasis on principles rather than rules and on 'consensus policing' (O'Connor 1988:52) requires the police to be representative of the community and to administer justice in accordance with community standards (Fielding 1999:1.17-1.20). Drawing parallels between the recruitment of female and ethnic minority officers, Fielding then further argues that ethnic recruits as 'a small minority' will necessarily follow or even embrace the 'dominant and conventional ways of doing things and of justifying them', but that recruitment of ethnic officers in excess of their proportion of the population and over an undetermined 'threshold' will establish 'sufficient support within the organisation to challenge accepted practices and attitudes whose effect is racist' (Fielding 1999:1.24). Whilst the effectiveness of the recommended training would appear to be negated or at best questionable, significant recruitment of ethnic minority officers might still bring benefits, if the poor history of ethnic minority deployment, promotion and resignation due to cultural barriers could be overcome (Fielding 1999:1.28-1.29).

The Implications for Australian Criminal Justice

i. Policing in Australia

The issues of police racism and incompetence raised by the Inquiry seem highly applicable to Australian policing in light of the 'Cop It Sweet' documentary shown on ABC TV, the extensive research into NSW policing by Chan (1997), and the lack of attention to racism in the Wood Royal Commission. The stereotyping of 'ethnic criminality' and marginality, as illustrated in 'Cop It Sweet' has resulted in the 'over policing' of Aboriginal and Non-English-Speaking Background Communities due to the extent of police discretion and its exercise according to 'perceptions of what constitutes suspicious activities and who is considered to be respectable' (Chan 1996:161). On one end of the spectrum, over-policing encompasses both the use of excessive force such as in the 'Redfern Raid' on the premise that 'normal surveillance activities' cannot operate where the people are 'all of one breed' according to the Sydney District Commander (SMH 1990:9) and the bringing of excessive charges in the 'Greek Conspiracy Case' (see HREOC 1991:161-164). On the other end of the spectrum, over-policing is the everyday discrimination of subjecting Aboriginal households to unwanted and unwarranted police visits (HREOC 1991:83). Furthermore, since the priority and resources accorded to incidents come under police discretion, the sidelining of racist incidents as 'normal' to the community or as less urgent than 'serious assault or major property damage' has resulted in the 'under-protection' of ethnic minorities, despite or perhaps because of the racist element involved (Hogg & Brown 1998:67; HREOC 1991:165). Moreover, police tend to locate their problematic relations with ethnic minorities 'within the minority communities rather than within the police force', with 80% of police respondents in Chan's survey nominating 'cultural traditions', 42% nominating 'community attitudes' and 38% nominating 'apathy of the community' as problems, but only 25% nominating 'police attitudes' and only 10% nominating the 'ineffectiveness of the police' (Chan 1997:109). The Inquiry's findings and recommendations are thus relevant to the police approach to ethnic minorities and treatment of racist incidents in Australia.

ii. Changing Policing in Australia

The question is, therefore, whether the findings and recommendations of the Inquiry will affect Australian policing. Firstly, it is arguable that the Inquiry has brought anything new in the way of recommendations than previous inquiries into policing in Australia. With regards to police accountability, the National Inquiry into Racist Violence would seem to have already gone further in recommending 'statutory codes of practice' to protect the rights of ethnic minorities and to ensure clearer police accountability and in recommending 'experience and proven ability' to work with ethnic minorities as 'prerequisites for promotion' (HREOC 1991:319-320, 333). In regard to policing training, the Inquiry would seem to have only reiterated previous recommendations to provide 'crosscultural awareness' and 'community relations' training, to emphasise the 'officer's duty to provide professional service to all residents', to allocate 'adequate time and resources' and to provide specialised liaison officers (HREOC 1991:330, 333; NCPSMA 1992:2.5.1, 8.4.6). In relation to police recruitment, the Inquiry only echoes previous recommendations for ethnic minority recruitment and fails to recommend either 'screening procedures' to filter out racially-prejudiced recruits, or 'supervised placements' of recruits in areas with significant numbers of ethnic minorities, or 'special programs' to ensure that recruitment standards and prerequisites can be met (HREOC 1991:331, 333). On the subject of police treatment of racist incidents, the recommendations of the Inquiry would seem to have the same effect as previous recommendations that incidents and allegations be 'collected, collated and analysed' on a 'uniform basis', that under-reporting be tackled with better community relations programs, and that 'high priority' should be accorded to the investigation and prosecution of racially-motivated incidents (HREOC 1991:332; NCPSMA 1992:6.4.7). Whilst such summaries of recommendations might be criticised for over-simplification, the basic conclusion remains.

Secondly, there is little evidence of change within the political agenda of the Australian governments or within the management or operational levels of the police force, so that these recommendations would have greater success than their predecessors. Recommendations for major change to Australian criminal justice seem to be successful only where in the context of such national catastrophe and outrage as followed the Port Arthur massacre (28-29 April 1996) and where the recommendations themselves are as limited in scope as Howard's Ten-Point Plan for uniform gun control (10 May 1996) or are later lessened or undermined by such strong political elements as the Queensland gun lobby. Furthermore, the notions of 'peacekeeping' and community justice inherent in such recommendations do not fit with political law and order campaigns focussing on 'crime control' and the associated slogans of 'zero tolerance' and the 'war on crime'. Indeed, such recommendations have fallen readily within the 'terribly familiar and recurring cycle' identified by Hall of the problem followed by the conference, followed by the research which 'reinforces what we already know', after which 'nothing happens' (Solomos 1999:3.4).

Conclusion

It would, therefore, be all too easy to dismiss the Inquiry as failing to understand the flaws of the police investigations within the wider context of policing in an ethnic society, and as failing to provide anything new, more effective or more practicable in terms of recommendations. However, in the Australian context, the tackling of the issues associated with relations between police and ethnic minority communities has continued to be essential to successful policing in our multi-ethnic society and the Stephen Lawrence Inquiry in the UK openly and thoroughly addressed these issues. Though we might not agree with the specific findings and recommendations of the Inquiry, the discussion generated in academic circles and the furore provoked in policing circles indicated that these findings and recommendations have not been definitive but instead have set some parameters for future debate.

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