Policing public order and public places

By Chris Cunneen

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In late March 2006 the NSW government announced it was requesting tenders for the supply of water cannon to the NSW police riot and public order squad. The reason presented to the public, as to the need for the equipment, stemmed from the racially-motivated public disturbances at Cronulla. The government also announced previous riots at Redfern and Macquarie Fields were instances where water cannon may have been used, if available.[1]

The previous month it had been announced that police would be trialing the use of laser guns which deliver electric shocks. Perhaps the NSW government is unaware that the US-based corporation Jaycor has developed an electrocuting water cannon where, according to the company, 'debilitating but not lethal shocks' travel through the water jet—a 'two for the price of one' bargain in the public order armoury.[2] The current proposals are in addition to the arming of many Australian police services with capsicum spray.

One might question whether public disorder has reached a point in Australia where governments could justify the use of water cannon against its citizens. While water cannon are presented as a 'non-lethal weapon', they can, and do, cause serious injury, both through the blunt impact trauma from highly pressurized water, as well as injuries sustained from flying debris and collisions with cars, poles and other fixed objects.

That there is serious consideration of the use of water cannon belies a shift in attitude towards public disorder and appropriate policing. Certainly, the water cannon will not work in relatively closed spaces, like football stadiums, nor does it discriminate well in public places where only a small number of people in a crowd may be involved in violent activity. As the Americans found in the civil rights and Vietnam War protest days, water cannon also poses a public relations nightmare for government. One might question, for example, the long-term effect on the public if water cannon had been used in Melbourne during the World Economic Forum demonstrations in September 2000. Perhaps, more importantly, these solutions to public disorder shift attention away from the cause of such disorder. It is easy to forget that recent riots in Palm Island, Macquarie Fields and Redfern all occurred immediately after there had been deaths in police custody. All three communities are among the poorest urban and rural places in Australia, and have histories of volatile police relations. Water cannon are unlikely to resolve the long-running problems in these communities and will, in all likelihood, make day-to-day policing far more difficult.

Are we becoming a society where public disorder is more prominent? A cursory look at the last three decades suggests that levels of public disorder have remained relatively infrequent, and perhaps less frequent now than in the past. Most large scale public disorder has either been associated with political protests, sporting and leisure events, or as a reaction against heavy-handed policing. There have been riots associated with music venues, such as the Frankston Hotel in Melbourne, the Star Hotel in Newcastle and the Stage Door Tavern in Sydney, which have reached almost iconic status through later popularization in rock music. There have been disturbances over the years at soccer and rugby league matches—and these continue to cause some level of concern. The longest running public conflict around leisure events was the riots at the Bathurst Motorcycle Races during the early to mid 1980s.[3]

Police responses to these disturbances have varied from underestimating the conflict, to ad hoc violent over-reaction,[4] to relying on specialized police riot squads. Perhaps one lesson, which should be kept in mind in today's climate, is the danger of institutionalising conflict between particular groups and the police. Certainly the lesson from the Bathurst Motorcycle Races riots was that the use of the Tactical Response Group (TRG) had a limited effect on controlling the violence and instead institutionalised a pattern of anti-police behaviour.

The heyday of the TRG-type police groups was the late 1980s, so it is disturbing to see the re-emergence of the idea that heavily equipped riot police will stop public disorder. Ironically, the last time the purchase of water cannon was seriously discussed was during this period. By the late 1980s the TRG in New South Wales and Western Australia were also routinely used in Aboriginal communities when there were disturbances. By the early 1990s there was a number of official inquiries—particularly over the use of excessive force. As a result the New South Wales TRG was disbanded.[5] Today, the same idea has re-appeared as the riot and public order squad.

Of course, not all public order policing takes such an extreme profile as that outlined above. What has been interesting over recent years are the changes in legislation that have facilitated more interventionist approaches to the more mundane activities of people (particularly young people) in public places. These have included laws allowing police to search and move-on individuals, as well as more punitive approaches to bail and sentencing which, effectively, enforce curfews and restrict movement and association. An example of this is the *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001* (NSW). The Act allows a court to make a 'non-association order', prohibiting the offender from associating with specified person(s). The court may also make a 'place restriction order', prohibiting the offender from visiting a specified place or district.

In relation to move-on powers and search powers, it is worth considering the impact of the *Police and Public Safety Act 1998* (NSW). This Act gives police specific 'move-on' powers. According to the New South Wales Bureau of Crime Statistics and Research, some 10,000 orders were issued in the first 12 months after the law was proclaimed. Refusal to obey such an order resulted in more than a thousand fines being issued.[6] The same legislation gave police the power to search people they suspected of being in possession of knives and other prohibited implements (such as scissors, nail files, and so on). Possession of a prohibited implement is an offence, as is refusal to allow a search. Parents can also be found guilty of an offence if they knowingly allow their child to carry a prohibited weapon.[7] In the first 21 months after the legislation was introduced, more than 27,000 people were searched. Around one in five people were found to be carrying a prohibited implement.[8]

One aspect of the enforcement of the legislation is the way that it has impacted on young people and, more specifically, young Aboriginal people. The legislation has general applicability to adults and juveniles. However, it is overwhelmingly enforced against young people. In relation to the use of search powers, some 42% of those searched were 17 years or younger and a further 38% were aged between 18 to 25 years old. Yet, in the vast majority of cases where young people were searched, police did not locate a prohibited implement. For example, 86% of the searches of young people aged 17 did not result in a 'productive' search.[9]

A similar picture emerges when we look at the use of move-on directions by police. Some 48% of people given directions to move-on were aged 17 years or younger. If we look more closely at the use of this legislation then it is also clear that not all young people are equally affected by it. In general, towns with high Aboriginal populations had a much higher use of searches and move-on directions. Move-on directions were used by police some 184 times more frequently per head of population in Bourke and Brewarrina than they were in Sydney's Rose Bay.[10] Similar disparities are also evident with the use of searches.

In considering issues around public order and public space, it is also important to recognize the role of private policing. Private security guards now outnumber state police by more than two to one.[11] Whether a site is publicly accessible, while privately owned, or if it has explicit restrictive access, makes a difference in the kind of policing and legal regulation that will be in place. In some residential areas and sites, for example, residents are protected by private security firms. Access is controlled by the firms, as is routine patrolling of the site. The architecture and planning of such residences

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and residential areas tend to be designed with specific security and access objectives – this is the idea of the 'gated community' which clearly focuses on exclusion of 'outsiders'.

In some cases, private companies and corporations are granted extraordinary powers to police the users of their privately owned, but publicly accessible, urban spaces. In 1994, for example, the Queensland government introduced the Southbank Corporation Amendment By-Law (No.1) 1994, which provides power for security officers to stop people, ask for their name and address, and direct them to leave the site. The by-law was amended in December 1995 to enable security officers to unilaterally ban people with written notice from returning to the site for up to 10 days if the person disobeys a direction, is drunk or disorderly, or even if a security officer simply considers the ban 'justified in the circumstances'. Security officers can also apply to the court to ban people for up to one year. It is important to note that not only has the law given private police greater powers of exclusion than the state police, but also, that it is available to security officers regardless of training.[12]

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There has been a move to a much tougher stance on public disorder and part of this has been through legislative changes that have increased police powers in the public realm, as well as calls for 'technical' solutions to public disorder, such as the use of a water cannon. In the aftermath of the Cronulla disturbances, new public order legislation was introduced in New South Wales—the *Law Enforcement Legislation Amendment (Public Safety) Act 2005*. The legislation removes the presumption in favour of bail for certain public order offences, it allows police to seize vehicles, mobile phones and other communication devices, impose an emergency closure of licensed premises and liquor outlets, and establish emergency alcohol-free zones.

Perhaps, most disturbing, are new 'lockdown' powers where police can declare an area—such as a region, suburb or location—to be a restricted area and prevent people from entering or leaving that area. These lockdowns were put in place in various Sydney beach suburbs in the days following the riots at Cronulla. It is telling, however, that within a week of the new laws being enacted, the first use of a 'lockdown' outside of Sydney was in a public housing estate in Dubbo, with predominately Aboriginal residents. As a result of a disturbance, local residents spent the first day of 2006 being unable to either enter or leave the estate in which they resided.

Endnotes

1. Clennell A. 'Voters on drip feed as lemma pledges water cannon' *Sydney Morning Herald*, 21 March 2006.
2. Smith G. 'The Electrocuting Water Cannon' *The Village Voice*, 29 January 2003.
3. Bikers and police clashed for many years at this Easter Carnival event. Bikers resented and lashed out at the increasingly heavy police presence and their intolerance of 'biker rituals', resulting in the eventual cancellation of the annual event. For more information see Cunneen, Findlay, Lynch and Tupper (1989) *The Dynamics of Collective Conflict*, Law Book Company, Sydney.
4. See for example, the 1994 report by the Victorian Ombudsman on police reaction to the Richmond Secondary School blockade.
5. Cunneen C. (1990) *Aboriginal/Police Relations in Redfern with Special Reference to the Police Raid of 8 February 1990*, Report Commissioned by the National Inquiry into Racist Violence. Published by the Human Rights and Equal Opportunity Commission, Sydney.
6. *Sydney Morning Herald*, 21 December 1999, 11.
7. NSW Office of the Ombudsman (2000) *Police and Public Safety Act*, Office of the Ombudsman, Sydney.
8. Fitzgerald (2000) *Knife Offences and Policing, Crime and Justice Statistics*, Bureau Brief No. 8, June 2000, New South Wales Bureau of Crime Statistics and Research, Sydney.
9. NSW Office of the Ombudsman (2000) *Police and Public Safety Act*, Office of the Ombudsman, Sydney, 128.
10. NSW Office of the Ombudsman (2000) *Police and Public Safety Act*, Office of the Ombudsman, Sydney, 233-4.
11. Prenzler and Sarre (1998) *Regulating Private Security in Australia*, Trends and Issues No 98, Australian Institute of Criminology, Canberra.
12. Cunneen and White (2002) *Juvenile Justice Youth and Crime in Australia*, Oxford University Press, Melbourne.