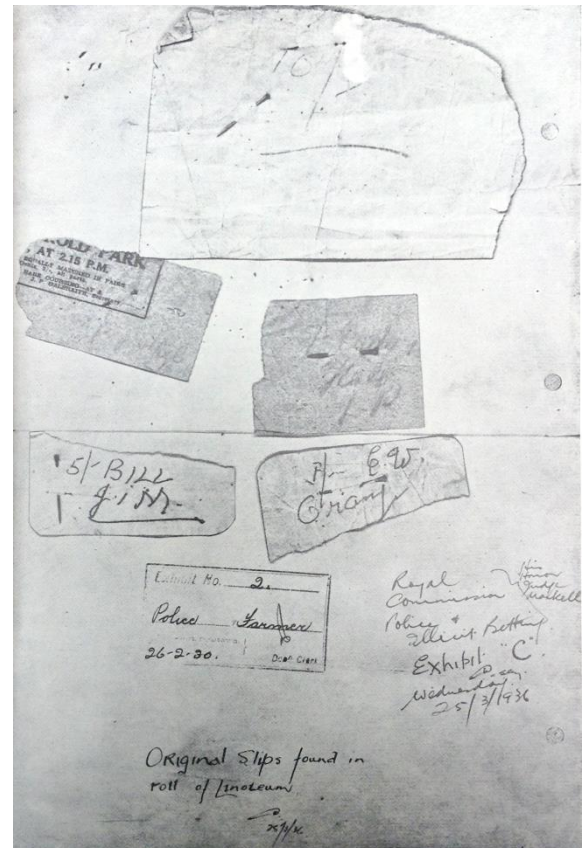
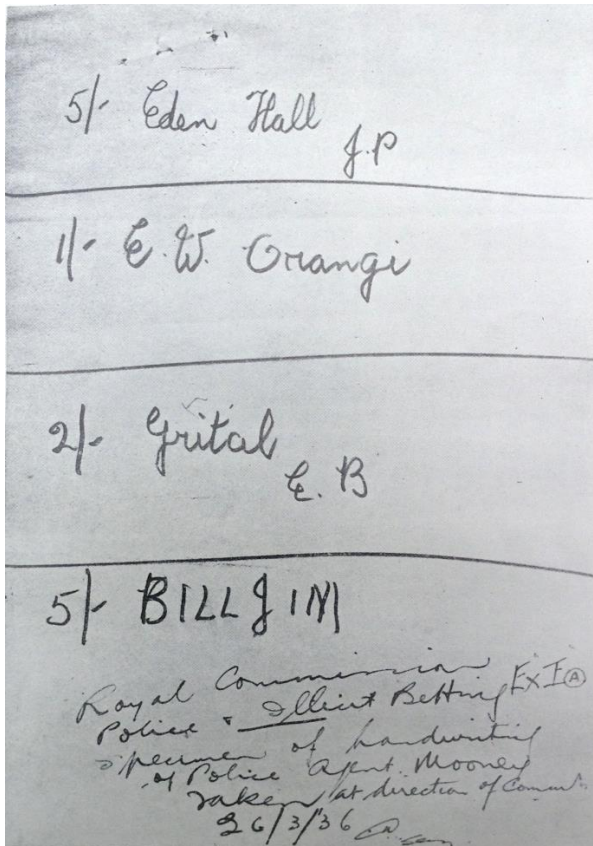


Corruption in Evidence:

Policing Starting-Price Betting in 1930s NSW



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2013

“A thesis submitted in partial fulfilment
of the requirements for the degree of BA (Hons) in History, University of
Sydney.”

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Acknowledgements

This thesis has been an enormous undertaking, and would not have been possible without the inputs of a number of people.

Thanks go firstly to Stephen Garton for his supervision. His feedback was always constructive, timely and on-point. I was grateful for the direction his advice gave to my work and as the deadline drew closer, his unerring composure!

Next, I would like to thank Ally, for her support, for keeping me grounded and for her sense of humour during the drafting process.

I would like to thank the various staff members at the NSW State Library and NSW State Records for answering my streams of queries.

Finally, thanks go to my parents Beth and Rod, for the support they have offered not only during this year, but throughout the course of my education.

Abstract

This thesis analyses two Royal Commissions into the policing of SP bookmaking that the NSW government issued in 1936 and 1937. These Commissions provide a window into the social history of betting and policing, as well as the relationship between two groups whose activities placed them so directly in each other's paths.

The Royal Commissions also reflect the politics of betting and policing contemporaneous to them. The inquiries are symptomatic of deeper-rooted public concerns about off-course betting, and represent a poorly articulated, but publically supported disapproval of police tactics.

I find that these Commissions are suggestive of lower-level police complicity in off-course betting and that senior police were at least tacitly complicit in their activities. Moreover, I explore why it was that in face of such overwhelming evidence the Inquiry's Commissioner was reluctant to find conclusively that the evidence demonstrated police corruption.

Introduction

On 22 February, 1930 a man named Henry George Farmer was arrested and charged with using his premises for betting. Farmer was the owner of a hairdresser's and tobacconist's shop in inner-western Sydney, and had been for the previous thirty years. In the Marrickville police court, where his case was tried, Sergeant Keeble, Constable Bradbury and a police agent named Mooney gave evidence against him. According to their testimony Mooney had placed a bet with Farmer around 2:50pm, through a window overlooking a laneway beside his shop, and had watched several others do the same. Soon after, Bradbury had approached the window and heard a man place a bet on a horse named "Eden Hall", before he and Mooney returned to Sergeant Keeble at Marrickville police station. The three men returned to Farmer's shop, where Sergeant Keeble made a thorough but unsuccessful search for betting slips or other evidence that betting had taken place. Following a suggestion by Bradbury however, Keeble found six slips of paper in a roll of linoleum at the top of the stairs behind a radio, which were tendered in evidence. Four of the slips bore the names of horses, one of which was "Eden Hall". One of the officers also found a newspaper in which someone had highlighted the race-odds.¹

¹ Horace Markell, *The Report of the Royal Commission of Inquiry into Allegations Against the Police in Connection with the Suppression of Illicit Betting*, (Sydney: David Harold Paisley Government Printer, 1936), pp. 34 – 37.

Farmer's evidence told a different story. He flatly denied taking bets on the day of his arrest, and had protested his innocence while his premises were searched. During the search, which had lasted for over an hour, Bradbury had left the room for a period of five or six minutes, passing by the roll of linoleum at the top of the stairs on leaving and returning. This was in spite of Farmer's request that Bradbury not be allowed to leave the room. It was not long after Bradbury returned that he suggested Keeble check behind the radio. When the betting slips were turned up, Farmer had turned to Keeble and said 'I told you, Sergeant, not to let that man go downstairs.'² On this evidence, Farmer was convicted and fined £20.

Six years later, Farmer's case was re-heard before the New South Wales Royal Commission of Inquiry into Allegations against the police in connection with the Suppression of Illicit Betting. After re-reading the police-court evidence, and examining Farmer, The Commissioner, Judge Markell, found that Farmer should not have been arrested. The Commission also conducted a handwriting test, and demonstrated that Mooney had been the author of the betting slips found in the linoleum.³ Markell concluded that Constable Bradbury had "framed" Farmer and that he and Mooney had given false evidence against him.⁴

The Royal Commission before which Farmer appeared was the result of growing political tensions surrounding the policing of betting offences. Farmer's case was one of 27 Markell heard before the Commission, which called on 83 police witnesses and covered incidents and arrests during a period from 1930 through to early 1936.⁵ As Farmer's case demonstrates, the Royal Commission held police behaviour to a level of account for which the police were neither prepared nor habituated. Significantly, not all the cases brought forward were

² Ibid.

³ See Cover Image.

⁴ Ibid.

⁵ Ibid: pp. i – 130.

resolved as easily as Farmer's. There were limits in the extent to which the Commission was able to engage with the cases brought before it, and a number of allegations were left shrouded in doubt.

The Royal Commission also highlighted one particular case. Amongst the twenty-seven it heard, that of William George Mowlds distinguished itself, becoming the subject of a further Royal Commission which was issued early in 1937. In 1933 three police officers had allegedly framed Mowlds and then given false evidence against him in court. Although this type of police behaviour often went undetected, Constable Miller, a fourth officer involved in Mowlds' arrest drew attention to what had happened. In doing so, he set off a chain of events that put the police administration and its culture on stark display.⁶ This thesis is about these two Royal Commissions of Inquiry; about the policing of betting and the politics of investigating it.

By the early 1930s betting on horse racing in Australia was a sophisticated affair. Informal forms of betting such as wagers or sweepstakes were popular, but most punters placed bets with a bookmaker or with the operator of a totalisator machine.⁷ A bookmaker took bets on calculated odds, and paid dividends in a pre-determined ratio to the principal bet once the results of a race were known. Bookmaker's odds were calculated to maximise the likelihood that a bookmaker would profit whatever the outcome. The totalisator machine by contrast, pooled bets and calculated odds in a *pari-mutuel* fashion. Dividends on a win depended on the quantity of bets placed and the number of individuals who had placed bets on that

⁶ Markell, Horace, *the Report of the Royal Commission of Inquiry into Certain Matters Arising from the Report of the Royal Commission on Police and Illicit Betting 1936*, (Sydney: David Harold Paisley, 1937).

⁷ A sweepstakes or "sweeps" is a form of betting in which all horses are allocated to participants and the winner receives the entire pool of bets. A wager by contrast, is a private bet between two or more individuals.

particular outcome. After the race result was known, the invested money was then divided after a cut was taken for the machine's operator.⁸

In 1930s NSW, and in most other Australian states, there were laws regulating both types of betting. Bookmakers were subject to the 1912 Gaming and Betting Act.⁹ This Act prohibited individuals from acting as bookmakers anywhere but on a licensed racecourse. It imposed fines on anyone caught taking bets off-course and prohibited anyone younger than twenty-one years of age from betting. The Totalisator Act of 1916 placed the same restrictions on the operation of a totalisator machine.¹⁰ Although the Acts placed similar restrictions on betting the fines schedules were different. While any conviction under the Betting and Gaming Act, which could include street betting, betting in an hotel or using premises for betting attracted a fine of £20, a conviction under the Totalisator Act gave the presiding judge the discretion to impose a fine of between £5 and £20, and the lesser charge was often preferred.¹¹

Legislative deterrents notwithstanding, off-course betting was popular during the inter-war years in New South Wales. Indeed, Farmer's betting conviction was just one of 2878 recorded in NSW that year.¹² During the early 1930s, Starting-Price – "SP" bookmakers, "bookies," or bettors – as they were often referred to, were a common fixture in most pubs and could often be found operating in tobacconists, barbershops or small businesses. The odds they offered were usually based on those offered on-course, and were received either from a correspondent on the track, in the newspaper or on the radio.

⁸ For more detailed explanation see: O'Hara, John. *Gaming and Betting in Australia, 1788-1983: A Social and Cultural Analysis.* University of New England, [PhD Thesis], pp. 168-9.

⁹ *The Gaming and Betting Act (NSW) 1912.*

¹⁰ *The Totalisator Act (NSW), 1916.*

¹¹ Markell, in *Report 1936*, p. 118.

¹² Of this figure, 2297 were in Sydney metropolitan district, 29 in the Newcastle district and 552 in the rest of the state. Figures taken from speeches to police involved in betting work in 1932 and 1934, delivered by William Mackay, appended to: *Ibid*, pp. 120 – 133.

Critically, the same laws which produced Starting-Price bookmaking also made it a policing issue. As betting proliferated during the early 1930s the police were increasingly embroiled in its suppression. Between 1910 and 1950 arrests for gambling offences increased markedly, growing steadily from less than one arrest per thousand people to just under three.¹³ In 1929 the police made 2069 arrests for illegal gaming, a figure which had increased to 3808 by 1931, making gaming offences to the largest single category of arrests for the first time in NSW history.¹⁴ It is important however, that such figures are read with caution, and not mistaken for an outright increase in crime. Satyanshu Mukherjee, Michael Sturma and Judith Allen have noted that any crime statistics are the product of a range of factors outside the actual commission of crimes including crime reporting, the nature of legislation regulating a particular behaviour and the attitudes of police and justice practitioners.¹⁵

In 1936 however, overwhelming public attention was given to the role of the police. Critically, as betting arrests increased, so did concerns about the manner in which the police were obtaining them. By 1936, these concerns reached breaking point. Such was the disquiet, that the NSW parliament issued a Royal Commission of Inquiry.

There have been few comprehensive studies of the 1936 Royal Commission and even fewer on its 1937 counterpart. The most substantive is in Richard Evans' 2004 PhD thesis on police power and more specifically, the personality of William MacKay who was the NSW police Commissioner between 1935 and 1946.¹⁶ Evans reading, which comprises two chapters, is thorough, well-researched and builds the two inquiries in a broader narrative

¹³ Peter Grabosky, *Sydney in Ferment: Crime, Dissent and Official Reaction 1788-1973*, (Canberra: Australian National University Press, 1977), p. 132.

¹⁴ Alfred McCoy, 'Sport as Modern Mythology,' in McKernan et al. *Sport*, p. 40.

¹⁵ See: Satyanshu Mukherjee, *Crime Trends in Twentieth-Century Australia*, (Sydney: George Allen and Unwin, 1981), pp 13 -15; Michael Sturma, *Vice in a Vicious Society: Crime and Convicts in Mid-Nineteenth Century NSW*, (Queensland: University of Queensland Press, 1983), pp. 163-8; Judith Allen, *Sex and Secrets: Crimes Involving Australian Women Since 1880*, (Melbourne: Oxford University Press, 1990), pp. 1-16.

¹⁶Richard Evans, 'William John Mackay and the NSW Police Force: A Study in Police Power.' Monash University, Melbourne, 2005, [PhD Thesis].

about William MacKay's career. In doing so however, he gets caught by questions of culpability, and overlooks the wider nuances of the Commission's investigation.

Kevin Seggie also examines the 1936 Royal Commission in his PhD thesis on the NSW police force and its relationship to Government in the period 1900-1939.¹⁷ Seggie's treatment is more descriptive than analytical, and as such carries many of the assumptions of the Commission, rather than seeking to identify, unpack and interpret them. Symptomatic of both Evans' and Seggie's analyses is a tendency to retrospectively blame the Commissions for not casting their net more widely, rather than questioning why the two Commissions reached the conclusions they did.

More frequently, the 1936 and '37 Commissions appear as moments in histories dealing with gambling or policing. Mark Finnane for example, mentions the Royal Commission in a history of the NSW police force, describing it as a moment when the police were 'at the centre of attention relating to the policing of vice.'¹⁸ Martin Painter alludes to 'inconsistent police action' during the early 1930s,¹⁹ and Richard Waterhouse has referred to the Commission to demonstrate that betting was 'rife' in NSW during this period.²⁰ Such histories are useful in contextualising the Royal Commissions, but often rob the police and SP operators of their agency. More than this, they tend to pigeon-hole the Commissions in its relation to either policing or betting, when they are most constructively understood as being a part of both.

¹⁷ Kevin Seggie, *Aspects of the role of the police force in New South Wales and its relation to the government 1900-1939*, (Sydney: Macquarie University, 1989), [PhD Thesis].

¹⁸ Mark Finnane, 'From Police Force to Police Service? Aspects of the Recent History of the NSW Police Force,' in: David Dixon (Ed.), *A Culture of Corruption: Changing an Australian Police Service*, (Sydney: Hawkins Press, 1999), p. 8.

¹⁹ Martin Painter in: Jan McMillen, Michael Walker and Sylvana Sturevska (Eds), *Lady Luck in Australia: Papers on the Provision of Gambling*, (Sydney, University Printing Service, 1996), p. 39.

²⁰ Richard Waterhouse, *Private Pleasures, Public Leisure: A History of Australian Popular Culture Since 1788*, (Melbourne, Longman Australia, 1995) p. 174.

This thesis also draws on sociological work relating to betting and policing. Works such as Robert Reiner's *The Politics of the Police*,²¹ Maurice Punch's *Conduct Unbecoming*,²² or edited collections such as David Dixon's *A Culture of Corruption*²³ provide useful frameworks to interpret the allegations made against the police, and particular practices the Commission revealed. Likewise, Alfred McCoy's *Drug Traffic*,²⁴ or Janet McMillen's collection *Gambling Cultures* provide useful theories through which to interpret SP bookmaking and organised crime.²⁵ Such work, however, needs to be treated with caution by the historian. Not only do such analyses tend to interpret their subject in terms of social problems like "problem gambling", or police corruption, these frameworks often interpret behaviour on terms and in a language not available to historical subjects.

Finally this thesis engages with histories of policing and gambling. Such work is often informed by and even contributes to sociological approaches, but is separated from this body of work by its intentions. Mark Finnane has argued that in academic writing about policing a distinction exists between 'those who see history as a question and those who see it as an answer.' 'It is largely the historians,' he argues, 'who question history.'²⁶ Represented in Australia by writers such as Mark Finnane, Robert Haldane, Andrew Moore, Hilary Golder and Michael Sturma, this body of work is reasonably extensive, and has emerged as an identifiable strand since the 1980s, profiting from a broader growth of sociological work and social histories around this time.

In 1930s NSW, SP bookmaking and the police force were both discrete and integrated entities. Although in the early 1930s, both represented distinct activities with their own rules

²¹ Robert Reiner, *The Politics of the Police*, (Melbourne: Oxford University Press, 2010).

²² Maurice Punch, *Conduct Unbecoming: The Social Construction of Police Deviance and Control*, (London: Tavistock Publications, 1985).

²³ Dixon, *A Culture of Corruption*.

²⁴ Alfred McCoy, *Drug Traffic: Narcotics and Organised Crime in Australia*, (Sydney: Harper and Row, 1980).

²⁵ Jan McMillen (Ed), *Gambling Cultures: Studies in History and Interpretation*, (London: Routledge, 1996).

²⁶ Mark Finnane, 'Foreword' in: Mike Enders and Benoît Dupont (Eds.), *Policing the Lucky Country*, (Sydney, Hawkins Press, 2001), p. vii.

and values, they also existed in conversation with forces external to them. Above all however, they existed in conversation with each other. This thesis takes these two commissions as its subject and treats as problematic the politics shaping their investigations and findings. In so doing it explores the agency of bettors and police in their broader social context and the relationship that had developed between them by 1936. It argues that the Commission heard evidence which was incredibly suggestive of police complicity in SP betting businesses and that these behaviours were at least tacitly sanctioned by those supervising them. It also explains how a combination of politics, investigative method and interpretive framework obscured these behaviours from the eyes of Judge Markell, the Royal Commissioner of both inquiries.

The source material for this thesis is the evidence given before, and final reports of the two Royal Commissions. These sources comprise eleven boxes of papers at the NSW State Records centre and four volumes held in the collection of the NSW state library.

Newspapers, NSW parliamentary debates, joint volumes of parliamentary papers and legislation supplement this core material.

This thesis has three chapters. Chapter one situates the 1936 and 1937 Royal Commissions in histories of betting and policing. It will examine the cultural, socio-political and technological contexts which shaped SP as a distinct and historically specific form of betting, and the process by which governments, policed communities and the police themselves developed a distinct organisational identity by the time of the 1936 Royal Inquiry. Chapter two is a close reading of the evidence of the 1936 Commission. It will analyse the Commission's evidence as a means of investigating SP betting culture, policing practice and the relationship between them. It will unpack the Commission's findings to discuss why particular allegations were dealt with decisively while others remained elusive. Chapter three follows the trajectory of the case of William George Mowlds. Starting with Mowlds' arrest

in November 1933, it explains how Constable Miller's decision to report the actions of three fellow officers set this case on a trajectory that involved an internal police investigation, two Royal Commissions and enormous public and political scandal.

Chapter One

The “Evil” of Off-Course Betting: From Betting Shops to Starting Price

The cultural politics of the late nineteenth century is central to explaining the character of Starting-Price bookmaking in the 1930s. The racing industry is at the core of these politics. By the late-nineteenth century, horse racing in the Australian colonies was enjoying considerable popularity.²⁷ In 1880 the Melbourne cup attracted 100 000 spectators or about thirty-five percent of Melbourne’s population, and between 1880 and 1920 ordinary Saturday race meetings in Sydney regularly drew crowds of 30 - 40 000 people.²⁸ The dominant body governing racing in the colony was the Australian Jockey Club (AJC), who controlled racing rules and standards. Racing under AJC auspices valorised ‘good-sport’ for the improvement and training of thoroughbred horses. As demand for racing grew however, the AJC’s authority came under challenge from proprietary race clubs. These organisations offered events for horses excluded from AJC events and ran them over shorter, less challenging courses. Profit and entertainment were the focus. As Martin Painter and Richard Waterhouse have argued, ‘only in this way could the paying public be given a full day’s entertainment on a sufficient number of days of the year to make a business viable.’²⁹ Just as significantly,

²⁷ Richard Waterhouse (With: Martin Painter), *The Principal Club: A history of the Australian Jockey Club*, (Sydney: Allen and Unwin, 1992), p. 24.

²⁸ John O’Hara, ‘The Australian Gambling Tradition,’ p. 70.

²⁹ Painter and Waterhouse, *The Principal Club*, p. 32

proprietary racing provided a program sufficiently extensive for the profitable operation of professional bookmakers.

Betting on the outcome of races had long been part of horse racing, but the growth and popularity of colonial racing fostered the development of a betting industry. Painter and Waterhouse have noted that during the nineteenth century on NSW racecourses 'private wagering at early race meetings quickly became overtaken by bookmaking.'³⁰ These bookmakers however, were bound by laws preventing betting in 'public places,' and bookmakers were prohibited from erecting stands or even standing on soap-boxes to ply their trade.³¹ Rather, they were forced to shout their odds or don high-heeled shoes and 'garish' suits to distinguish themselves.³² Betting also spread into off-course betting shops, for which proprietary racing was 'bread and butter.'³³ Also illegal, betting shops were well-known and well-frequented. Employing lookouts and 'guarded by long corridors and banks of doors that could be chained and bolted against unwelcome visitors,' they were also a source of frustration to police.³⁴

The spread of betting did not go unchecked. Betting shops and the proliferation of betting more generally were amongst the targets of social reform movements in the decades surrounding the turn of the century. These groups targeted a broad range of perceived social evils, seen to be symptomatic of a more pervasive social decay. Centring on the temperance and other Protestant social purity movements, such groups sought to prohibit a range of so-called vices and to have policies enacted to restrict the sale of alcohol, prostitution and gambling.

³⁰ Ibid: p. 40.

³¹ Ibid: p. 41.

³² Ibid.

³³ Ibid: p. 43

³⁴ Ibid: p. 40.

Finding an ally in the AJC, the anti-gambling lobby achieved some political successes during the final decades of the nineteenth century. In NSW, the 1876 Gambling Houses Suppression Act was soon followed by the introduction of no less than 22 gambling bills – although very few were enacted – as well as three select committees of inquiry and one Royal Commission into gambling matters.³⁵ Rather than effecting vast changes in the late-nineteenth century however, the anti-gambling lobby was more successful in laying the foundations for future laws, and a broader politicisation of gambling. The 1906 Gaming and Betting Act was the first manifestation of this trend which continued through the twentieth century. This Act established a licensing system for racecourses, legalised betting at licensed racecourses, and limited the number of race days each year.³⁶ The anti-gambling lobby is significant for its success in encoding particular values into legal and regulatory frameworks. More than this though, it provides an insight into the terms on which spaces for cultural expressions were shaped during this period.

Religion was of central importance to this dynamic. In the late nineteenth century, a divide existed in Australian society between those of Protestant and Catholic faith. Chiefly a source of cultural difference, religious divide was also manifest in concerns about the provision of education and as such also had a political dimension. The source of much cultural mythology, religious difference has often been mapped onto ethnic origins, and in turn onto attitudes towards vice participation. Summing up this attitude in a semi-biographical piece on gambling attitudes in Australia, Ken Inglis talks of ‘the characteristic Anglo-Scottish

³⁵ O’Hara, ‘The Australian Gambling Tradition,’ in: *Sport*, pp.33-75.

³⁶ *The Gaming and Betting Act* (NSW), 1906. NB: This Act was amended in 1906 and 1907, and in 1908 a minor alteration was made in the Police offences Act, all of which were incorporated into a revised *Gaming and Betting Act* (NSW), 1912 which was the dominant piece of legislation governing betting and gaming from then until 1938.

Protestant perception,’ which sees that ‘gambling is a way of losing.’ Equally, he states, ‘in Irish Catholic perception, it is a way of winning.’³⁷

Protestant churches did indeed sit at the nucleus of social reform movements, but their involvement is not well explained by such essentialism. For Michael Hogan, Middle-Class protestants, having resolved issues over education provision, ‘found their next political campaign’ in the growing working-class enclaves of the inner-cities.³⁸ Targeting the “decay” they found there, such activists were derided by Irish Catholics, bohemian writers, Labour and Trade Union activists as well as those profiting from the vice trades, as wowsers. Hogan has also emphasised that although there were Protestant and Catholic temperance movements from around the 1830s, they were fundamentally different in character:

Protestant clerical influence stressed that drink was without any merit, and consequently there were calls upon the state to restrict its availability and ultimately to ban its use. Catholic leaders, [...] called for moderation in the community, and voluntary restraint or abstinence by individuals.³⁹

For J. D. Bollen however, the roots run deeper. In his work on Protestant activism between 1880 and 1910, Bollen has emphasised that social reform movements in the 1890s campaigned against a background of economic crisis. He situates political activism within a broader Protestant response to these years of crisis.⁴⁰ More recently, Judith Brett has argued that Protestant values, carrying with them a ‘baggage’ of anti-Catholicism were sufficiently pervasive to form the basis of Alfred Deakin’s Liberals, the party with which social reform movements found the easiest home in the post-federation political environment. Religion

³⁷ Ken Inglis, ‘Gambling and Culture in Australia,’ in: Geoffrey Caldwell, (With: Bryan Haig, Mark Dickerson, Louise Sylvan) (Eds.), *Gambling in Australia*, (Sydney: Croom Helm, 1985), p. 12.

³⁸ Michael Hogan, *The Sectarian Strand*, (Melbourne: Penguin Books, 1987), p. 146.

³⁹ Ibid: p. 145.

⁴⁰ J. D. Bollen, *Protestantism and Social Reform in New South Wales, 1890 -1910*, (Melbourne: Melbourne University Press), pp. 1-12.

played a definitive role not only in shaping attitudes to vice participation, but also in defining it as political in the first place.⁴¹

Although Protestant churches formed the nucleus of political activism, its successes relied on shifting patterns of alliances, interests and compromises. Amongst these were the first-wave feminists or women's movement activists. Marilyn Lake, with the support of Judith Allen, has argued that social reform was part of a broader contest between masculinist and feminist visions for national culture.⁴² In her work, Lake demonstrates the existence of a masculinist vision of Australian culture in late nineteenth-century Australia, rendered invisible, she argues because men 'appear in most historical accounts as neutered and neutral historical agents.'⁴³ Epitomised by "the Lone Hand" figure, this culture idealised a bachelor model of masculinity, defined by his 'rejection of the idealisation of the domestic man,' who privileged intellectual freedom, heavy drinking, smoking, gambling and unfettered sexual access to women.⁴⁴ Women's support for temperance as well as prostitution and gambling regulation, and for a smaller group within this wider women's movement, the campaign for women's suffrage, reflected the negative impact a masculinist culture had on their own experiences. Lake's argument has proven contentious, but demonstrates the complexity of forces at work in shaping Australian national culture at this moment in its history. It is also significant in highlighting the importance of gender in defining patterns of cultural expression and participation.⁴⁵

⁴¹ Judith Brett, 'Class, Religion and the Foundation of the Australian Party System: A Revisionist Interpretation,' *Australian Journal of Political Science* 37, pp. 39-56.

⁴² Lake, Marilyn, 'Historical Reconsiderations IV: The Politics of Respectability: Identifying the Masculinist Context,' *Australian Historical Studies*, (1986), pp. 116-131; Allen, Judith, "'Mundane" Men: Historians, Masculinity and Masculinism,' *Australian Historical Studies*, (1987), pp. 617-628.

⁴³ Lake, *The Politics of Respectability*, p. 116.

⁴⁴ *Ibid*: pp. 117.

⁴⁵ McConville, Chris, 'Rough Women, Respectable Men and Social Reform: A Response to Lake's "Masculinism",' *Australian Historical Studies*, (1987), pp. 432-440; Waterhouse, *Private Pleasures, Popular Leisures*, p. 187.

For some however, religious and gender conflict was a less useful means of comprehending the forces shaping late nineteenth-century society. For many associated with the Labor movement, social reform movements represented an attack on working class leisure. In debating the 1906 Gaming and Betting Act for example, the Labor member for Balmain argued that ‘the government profess to be anxious to put down gambling in all its forms, and yet they only aim at the man who runs the shilling sweep.’⁴⁶ Indeed, the Act’s provisions which outlawed off-course betting, but sanctioned it at men’s and racing clubs frequented by the wealthy fuelled this critique. In this vein Painter and Waterhouse have noted that amongst anti-gambling advocates, ‘attitudes towards gambling were very different with respect to the moneyed classes,’ contending that they were seen to be of a ‘different order from those that threatened the poor.’⁴⁷

Debates during this period about legalising the Totalisator machine mirrored these patterns. For the machine’s advocates, the totalisator promised the end of the bookmaker, and provided an opportunity for government revenue collection. For Social reformers concerned about the impact of gambling on the poorer classes however, it was an unjustifiable recourse which would only worsen gambling problems. In NSW the first totalisator legislation was not passed until 1916, when its use was legalised on licensed racecourses and a fines schedule was instituted to punish off-course use. The Totalisator Act also represented one of the more successful attempts to raise taxation revenue from legal betting, which also included a the institution of a Racecourse Admission tax in 1920, a Winning Bets Tax in 1930 and a series of Bookmaker’s Taxation Acts from 1917.⁴⁸ Significantly, the reluctance with which governments moved on the totalisator did not stop it becoming popular amongst off-course

⁴⁶ Mr Storey Quoted in: McCoy, ‘Sport as Modern Mythology, SP Bookmaking in New South Wales, 1920-1979,’ in: *Sport*, p.39.

⁴⁷ Painter and Waterhouse, *The Principal Club*, p. 41.

⁴⁸ See: *The Bookmaker’s Taxation Act* (NSW), 1917; *The Racecourse Admission Tax Act* (NSW), 1920; *The Winning Bets Taxation Act* (NSW), 1930.

bettors. Illegal “tote” shops, such as John Wren’s infamous establishment in Collingwood proliferated prior to government action on the issue.⁴⁹

During the interwar years, the character of gambling politics changed. Although gender, class and religion were still key determinants of individual gambling participation, public concerns focused increasingly on the politics of regulating a growing industry. Moves to tax legal forms of betting have already been outlined, and Painter has placed the emergence of state-run totalisators across Australia in this period. Racing also changed during these years, and the industry both modernised and consolidated during the 1920s, which stimulated betting enormously. Brian Haig has shown that expenditure on legal betting increased markedly, and expenditure as a proportion of personal income increased in the same period on all forms of gambling, both with bookmakers and on totalisators. In 1920/1 this comprised ninety-percent of all legal betting.⁵⁰

Illegal betting also thrived during the inter-war period. In these years off-course betting was changed significantly by an expansion of communications infrastructure. Post-war, there was a marked growth in the numbers of telephones and radios installed around the state.⁵¹ Race coverage and odds offered could be listened to in real time over the radio. Betting information could be quickly and easily communicated from the racetrack to an off-course clientele, and bets could be made easily over the telephone. Off-course bookmakers also had the means to confer with one another or organise funds at a moment’s notice. A growing industry during the 1920s, Alfred McCoy has argued that the SP industry ‘boomed’ during the 1930s. Critically, the demand for cheap, local betting which obviated the need for a tram

⁴⁹ McCoy, *Sport as Modern Mythology*, pp. 36-7. McCoy states that Wren’s Collingwood tote shop operated between 1893 and 1906 and earned a weekly profit of around £750.

⁵⁰ Bryan Haig, ‘Legal Gambling Since 1920/21,’ in *Gambling in Australia*, pp. 28-32.

⁵¹ McCoy ‘*Sport as Modern Mythology*,’ p. 39. McCoy quotes figures of: ‘Between 1914 and 1940 the number of telephone connections in New South Wales increased by 400 percent, from 49 040 to 197 046, with the largest increase occurring between 1920 and 1927 when the number doubled from 70 700 to 137 602. [...] In the two decades following the start of public broadcasting in the early 1920s the number of radios increased almost twenty-fold, rising from 25 311 in 1923, to 177 386 in 1933, and 494 884 in 1941.’

or race-track entry fee stimulated enormous demand during the years of serious economic depression.⁵²

Commentators have offered a number of interpretations for the rise of SP in the inter-war years. For Waterhouse the phenomenon is embedded in an entrenched cultural attachment to British Sports despite a growing Americanisation of Australian culture in the years following the First World War.⁵³ Others have emphasised the role of regulatory measures in changing the character of off-course betting. In his comparative study of the phenomenon in Australia and Britain for example, David Dixon has argued that in Australia where there were both prohibitive laws and stringent law enforcement, organisation and syndication of off-course bookmaking resulted, while in the UK, off-course betting remained low-level for the greater part of the twentieth century.⁵⁴ Alfred McCoy on the other hand, has noted that Starting-Price has been ‘the most consistent source of income for Australian organised crime,’ and examines SP within a broader process at work in the interwar years, whereby ‘petty criminality’ was transformed into ‘organised crime.’⁵⁵

The by-product of the rise in SP was greater police involvement in betting culture. By the interwar years, clearer and prohibitive laws and the proliferation of SP betting brought the police into contact with betting culture in a way not possible previously. Like betting however, by the early 1930s the police force also had a particular culture and organisation symptomatic of its history.

⁵² Ibid: p. 40.

⁵³ Waterhouse, *Private Pleasures, Popular Leisure*, pp. 185-188.

⁵⁴ David Dixon, ‘Illegal Betting in Britain and Australia: Contrasts in Control Strategies and Cultures,’ in *Gambling Cultures*, pp. 86-100.

⁵⁵ McCoy, *Drug Traffic*, p. 112.

The NSW Police Force: From Consolidation to Corporate Agency

The NSW police force was created by an Act of the colonial parliament in 1862.

Consolidating several disparate colonial police forces, the NSW police force was charged with law enforcement and general government duties such as the oversight of elections, the collection of statistical data, and the management of court petty sessions.⁵⁶ Some writers have pointed out that policing, both before and after consolidation had less-visible political functions, including the management of frontiers, the control of industrial disputes and the policing of sex crimes.⁵⁷

A uniformed and institutionalised police force is one particular manifestation of what police theorist Robert Reiner has described as the broader umbrella of social control.⁵⁸ This, he argues, can arguably be seen to include institutions such as religious or leisure organisations, but is more productively considered as being ‘the organised ways society responds to behaviour and people it regards as deviant, problematic, worrying, threatening, troublesome or undesirable.’ Government-controlled policing institutions are only a recent addition to social organisation, and one which is generally associated with industrialisation and the growth of urban centres. Clive Emsley has also demonstrated that the character of police forces reflects the values and style of their government creators. In a comparative study of policing in England and France between 1750 and 1870, he compares the militaristic model developed by the French Absolute monarchy with early English models of part-time civilian watches in the English constitutional monarchy. There, the French model was felt to be

⁵⁶ Finnane in: *A Culture of Corruption*, p. 7.

⁵⁷ See for example: Judith Allen in *Sex and Secrets* has explored on the policing of sexuality, particularly in relation to women’s sexuality, Sturma *Vice in a Vicious Society* has briefly outlined the roles of native and Border police, Mary-Ann Jebb in: Jebb, MaryAnn. “Blood, Sweat and Welfare: A History of White Bosses and Aboriginal Pastoral Workers,” (UWA Press, Nedlands, 2002), has explored the role of the police in managing Aboriginal Labour in north-Western Australia, Mark Finnane has commented briefly on the role of police in industrial disputes in: ‘The Politics of Police Powers: The Making of Police Offences Acts,’ in Mark Finnane (Ed), *Policing in Australia: Historical Perspectives*, (Kensington: UNSW Press, 1987), pp. 88-113.

⁵⁸ Reiner, R, *Politics of the Police*, pp. 4-5.

antithetical to ‘English “Liberty”,’ and so civilian policing prevailed until Robert Peel established the Metropolitan police by an Act of Parliament in 1829.⁵⁹ Widely held as the first modern police force, Monkonnen has argued that the key characteristic of Peel’s force was that it was neither civilian nor military and as such enjoyed greater legitimacy than anything before it.⁶⁰

The NSW police force too reflected the society responsible for its creation. In the first place, imperial identity played an important role in shaping the NSW police force. Mark Finnane has argued that at that ‘the establishment, consolidation and centralisation of colonial police forces was accompanied by the ready adoption of English policing regulations.’⁶¹ Notably, Charles Edwards argues that the Australian force differs from its progenitor in a key way. While British policing was developed on a model of local control, the 1862 Act placed the police force ultimately under control of the crown, and as such created a legacy of centralised control.⁶² For Hilary Golder and Russell Hogg by contrast, modern policing is linked inextricably with ‘the formation and transformation of urban class relations in the second half of the nineteenth century.’⁶³ In a similar vein Michael Sturma has argued that the 1862 Act was precipitated as fears of civil unrest replaced a concern with managing convict discipline. He emphasises however, that there were tensions between these ideals and reality. Conditions for colonial police officers were often harsh and that recourse to alcohol and other pastimes such as gambling and prostitution was common.⁶⁴

The turmoil of the late-nineteenth century saw the integration of the police into the urban environment. Against a background of industrial dispute, political agitation, urban growth

⁵⁹ Ibid.

⁶⁰ Eric Monkonnen, *Police in Urban America: 1860-1920*, (Cambridge: Cambridge University Press, 1981), p. 38.

⁶¹ Finnane, M, ‘The Politics of Police Powers,’ p. 90.

⁶² Edwards, Charles, ‘Democratic Control of Police: How 19th-Century Political Systems Determine Modern Policing Structures,’ in: *Policing the Lucky Country*, p. 15.

⁶³ Hogg and Golder, ‘Policing Sydney in the Late Nineteenth Century,’ in: *Policing Australia*, pp. 59-73.

⁶⁴ Sturma, M. *Vice in a Vicious Society*, pp. 163-178.

and economic depression, the police played an important functional role. Finnane argues that the police had an ‘ambiguous’ position. Acting as mediators in industrial disputes, they were often cast as ‘agents of government,’ although he suggests that they often played a more neutral role than popularly remembered. On the other hand, police were also charged with more mundane tasks including the returning of lost children, the arresting of drunks and the breaking up of street fights.⁶⁵ Hogg and Golder have suggested a broader significance for such work. They argue that because of the ‘still primitive state of urban government,’ policing ‘played a crucial role in the struggle to secure a new urban discipline in the latter half of the nineteenth century.’ This contribution was facilitated by ‘the police’s uniquely localised organisation and presence in civil society.’⁶⁶ This period was also marked by an expansion of police powers. Finnane has emphasised that the political success of social reform movements was accompanied by a considerable ‘refining’ of police powers in relation to vice suppression. Notably he has argued that moral and social reform ‘enhanced the potential of the police to control or oversee social behaviour,’ but put officers in closer contact with potential sources of corruption.⁶⁷

In the early twentieth century, consolidation was accompanied by increased organisational autonomy and rapid modernisation. Finnane has argued that early in the period expanded police powers were accompanied by the police force becoming ‘active advocate[s]’ for the first time.⁶⁸ The increased corporate agency this implied became most visible following the First World War. In 1920 an association for police was founded, and annual conferences between state police chiefs were instituted, although Seggie has argued that these failed to produce any ‘degree of uniformity’ between the various States’ forces, and most police also

⁶⁵ Mark Finnane, *Police and Government: Histories of Policing in Australia*, (Melbourne: Oxford University Press, 1994), pp. 9-23.

⁶⁶ Hogg and Golder, ‘Policing in Late Nineteenth Century Sydney,’ p. 63.

⁶⁷ Finnane, ‘The Politics of Police Powers,’ p. 98.

⁶⁸ *Ibid.*

became members of police unions, with the result that pay and conditions improved.⁶⁹

Policing practices were also updated. Under the Commissionership of James Mitchell, police were equipped with radios and motorcars.⁷⁰ In 1915, the first two female police officers were employed from over 400 applicants. They were subordinate to their male counterparts, with lower pay and limited professional rights, and they were given, as Jeanna Sutton has argued, a 'complementary' or 'specialist' role, charged mainly with tasks involving women and children.⁷¹

Particular urban policing issues faced the NSW police during the 1920s. Alfred McCoy has argued that:

In the years following World War One, the combination of narcotics, sly grog, SP bookmaking and prostitution created an enormously profitable illegal sector within the city's economy and allowed the formation of a professional criminal class.⁷²

Most significantly, the popularly named "razor-wars", between organised drug, prostitution and sly-grog traders and the violent gangs of razor-armed standover men employed to protect them, brought policing and crime into the public eye during the 1920s.

As Sydney's inner-east became a profitable and violent criminal milieu, it begun to receive sensational news coverage, in particular from the Sydney tabloid *Truth*. Increased publicity turned underworld figures into celebrities. Amongst them were Kate Leigh and Tilly Devine, who used actively engaged the press for public relations.⁷³ At the same time, certain police

⁶⁹ Finnane, 'From Police Force to Police Service?' p. 9; Seggie, 'Aspects of the NSW Police Force 1900-1939,' p. 204.

⁷⁰ Seggie, 'Aspects of the NSW Police Force 1900-1939,' p. 206.

⁷¹ Sutton, Jeanna, 'Women in the Job,' Moir, Peter, (With: Henk Eijkman), *Policing Australia: Old Issues, New Perspectives*, (South Melbourne, MacMillan, 1992), pp. 67-71.

⁷² McCoy, *Drug Traffic*, p. 112.

⁷³ Larry Writer, *Razor*, (Sydney: MacMillan, 2001), pp. 115-127.

officers became well-known. Amongst them was sly-grog and betting police Sergeant Cecil Joe Chuck who was known for his undercover tactics, disguises and astounding arrest figures.⁷⁴ Evans has argued that the press was also used opportunistically by senior police, particularly William MacKay, to create a context of scandal as a means of encouraging governments to grant more extensive police powers. Significantly, policewomen also became prominent in this milieu. Charged with policing so-called “fallen” women, policewomen such as Lillian Armfield and those hired after her, were drawn into the fray.⁷⁵

With this in the background, the NSW police underwent important structural changes during the second half of the 1920s. These changes were characterised by both increased central control and greater specialisation. The Central Investigative Bureau (CIB) was allocated a larger central office and its personnel were considerably expanded. Targeted squads for areas including drugs, vice, betting and gaming, arson, sly-grog and traffic were established in these years, and the number of detectives was increased significantly, from fifty-two in 1925, to 330 ten years later.⁷⁶ Reorganisation was also accompanied by several instances of police muscle-flexing in the public sphere. In 1929 the recently formed two-man drug squad emerged victorious from a run-in with the Pharmacy board over the dissemination of the recently regulated cocaine through dentists and doctors, and police advocacy played a significant role in the addition of a consorting clause, which rendered liable to arrest anyone found consorting with an known criminal, to the vagrancy Act.⁷⁷

The most substantive changes in police organisation and culture during this era stem from the influence of William MacKay. A police officer from Glasgow, Scotland, MacKay was

⁷⁴ Vince Kelly, *The Bogeyman: The Exploits of Sergeant C. J. Chuck, Australia's Most Unpopular Cop*, (Sydney: Angus and Robertson, 1956), Kelly states that in 1935 Chuck was responsible for the arrest of 1655 people, who paid £7 941 in fines.

⁷⁵ Vince Kelly, *Rugged Angel: The Amazing Career of Police Woman Lillian Armfield*, (Sydney: Angus and Robertson, 1961).

⁷⁶ Finnane, 'From Police Force to Police Service?', p. 10.

⁷⁷ Desmond Manderson, *From Mr Sin to Mr Big*, (Melbourne: Oxford University Press, 1993.), pp. 79-82.

named Commissioner in 1935, although influence apparent by 1929 when he served as officer in charge of the Criminal Investigation Branch. Above all, MacKay sought to replace the “beat” system which he argued was obsolete as a consequence of population growth and suburban expansion.⁷⁸ The beat system was that associated with Sir Robert Peel’s metropolitan police. In explaining the logic of beat policing, Mike Enders has emphasised that it is a product of the increased anonymity that industrial cities brought with them. The job of the police in the beat system was to bridge the gap between Commission of crimes and access to the broader justice system through knowledge of their particular community, otherwise known as their “beat”.⁷⁹ The abandonment of beat policing was not unique to Australia. Fogelson has shown that a similar transition was occurring in a number of American cities during this period,⁸⁰ and Critchley has demonstrated a similar trend in interwar Britain.⁸¹ During his career MacKay made several tours of the United States, Britain and Mainland Europe, and the reforms he was the key figure in effecting reflect this broader international pattern.

The broader significance of interwar police reform has been well debated. Finnane has argued that these changes were part of a shifting conception of police role as the police ‘force’ became the police ‘service.’ In the longer term moreover, he has noted that specialisation resulted in ‘the emergence by the 1960s of police leaders and managers who had detailed knowledge of only one area of police work.’⁸² In a different vein, Seggie has stated that the impact of MacKay’s reforms was to limit police presence on the street, which had an important effect on public perceptions of policing. He argues that ‘the police became,

⁷⁸ Seggie, *Aspects of the NSW Police Force 1900-1939*, p. 212.

⁷⁹ Enders, M, ‘The Social Construction of Crime and Policing,’ in: *Policing the Lucky Country*, p. 9.

⁸⁰ Robert Fogelson, *Big-City Police*, (Cambridge: Harvard University Press, 1977), pp. 219-30.

⁸¹ T. A. Critchley, *A History of Police in England and Wales*, (London: Constable, 1978), pp.176-9.

⁸² Finnane, M. ‘From Police Force to Police Service?’ pp. 7-13.

for many, unseen wielders of powers not fully understood.’⁸³ Indeed, police specialisation increases the opportunity for corrupt practice, but Mick Palmer has explained that it is only one amongst a range of possible influences on corrupt practices. These can include: unsupervised work amongst criminal entrepreneurs, extensive police discretionary powers, the use of informants, inadequate salaries, lack of accountability mechanisms and, specialised police work, many of which were present in the interwar period in ways not previously.⁸⁴

During the late 1920s and the early 1930s the police force was drawn to public attention for different reasons. The police were the cause of considerable public concern following heavy-handed tactics during an industrial strike at Rothbury coal mine in 1929, which left a man dead.⁸⁵ Just a few years later, the police were embarrassed as the paramilitary organisation the New Guard made headlines by unofficially opening the Sydney Harbour Bridge under police watch.⁸⁶

The policing of vice also changed. As economic depression and relaxed liquor laws shrank the vice market considerably, its shifted economics was shifted. SP grew as other vice markets shrank, and as it continued to expand and take a profit, the police became enmeshed in its suppression. Like drugs, traffic or arson, the policing of betting was a specialised area. Party to the broader pattern of police reform in the inter-war years, MacKay formed a squad to target sly-grog and betting in 1930. As with other vice economies, the police were in a difficult position. McCoy has emphasised that while some crimes, such as murder or theft create victims who seek retribution, illegal economies, are not only an ongoing criminal activity, but create customers who have few incentives to aid law enforcement efforts, and

⁸³ Seggie, *Aspects of the NSW Police Force 1900-1939*, p. 217.

⁸⁴ Palmer, M, ‘Controlling Corruption’ in: *Policing Australia*, pp. 108-9.

⁸⁵ Evans, Richard, ‘Murderous Coppers: Police, Industrial Disputes and the 1929 Rothbury Shootings,’ *History Australia* 9, (2012), pp. 176-200.

⁸⁶ Andrew Moore, *The Secret Army and the Premier: Conservative Paramilitary Organisations in NSW 1930-32*, (Kensington: UNSW Press, 1989); Evans, Richard, ‘A Menace to this Realm: The New Guard and the New South Wales Police, 1931-2,’ *History Australia* 5, (2008), pp. 1-20.

every reason to defeat them.⁸⁷ More than this however, the police were charged with suppressing a growing criminal activity in an environment characterised by growing concern that the police were deploying untoward tactics to obtain arrests. As early as 1928 complaints of unfair betting arrests were reported in the papers and in parliament.⁸⁸

MacKay was sensitive to public concerns and the impact they could have on police reputation, and urged his officers to exercise caution in this area of their work. In a set of addresses to betting police in 1932 and 1934, MacKay urged his officers to put their reputations first, and exercise restraint in this area of work:

The first consideration is to see that you are right; do not risk your reputation on sly-grog and betting shops. If the whole city was nothing else but sly-grog shops and betting shops, never mind that so long as your reputation is clean.⁸⁹

MacKay's speeches were rich in sentiment, but vague in message. Above all MacKay implored his officers to adopt 'clean' tactics, almost to the point of a mantra. 'Whatever you do,' he told his officers, 'do it clean.'⁹⁰ At the 1935 NSW police chief's conference, MacKay made a call for uniform exercise of discretion, and the employment of experienced officers in betting work. His comments suggest that the situation had not improved.⁹¹ Indeed, for all MacKay's efforts to balance the effective exercise of police powers while minimising adverse public and political opinion, the storm he had tried to prevent arrived. Complaints and

⁸⁷ McCoy, *Drug Traffic*, p. 31.

⁸⁸ For Example: Evans cites a case in 1928 in the *Sydney Morning Herald* 10 May 1928 alleging that police officers had urged innocent defendants to plead guilty; McCoy in 'Sport as Modern Mythology,' argues that there was 'growing concern' surrounding police tactics in betting, p. 41. In *Report 1936*, p. 120, William MacKay spoke of a case in Burwood, 'which is causing the department some consideration' in a series of addresses to betting police,

⁸⁹ *Report 1936*, p. 125.

⁹⁰ *Ibid.*

⁹¹ Minutes of police Chief's conference 1935, SRNSW [10/1838].

political concerns about police behaviour in relation to gambling mounted through the early 1930s, resulting in a major crisis for police and their reputation in 1936.

Chapter 2

Allegations against the Police and a Royal Commission of Inquiry

On 3 March 1936, Labor member for the electorate of Marrickville, Carlo Lazzarini, placed a motion before the New South Wales parliament, calling for the appointment of a select parliamentary committee, of which he would be a member, ‘to inquire into and report upon the methods and procedures adopted by the police in apprehending and securing convictions against persons alleged to have been guilty of starting-price and street betting.’⁹² Lazzarini’s call received support from both sides of the floor. Most notably, John Ness, United Australia Party member for the neighbouring electorate of Dulwich Hill expressed strong support of the motion. Lazzarini’s concern was with what he saw as the overwhelming prioritisation of betting over the policing of ‘serious crime,’ and both he and Ness contended that police were framing hapless individuals simply for the sake of showing ‘their immediate superiors they [were] doing something.’⁹³ Other members were concerned that the police were invading the privacy of people’s homes without search warrants or evidence, and that they were targeting agents of bettors, rather than the principals employing them.⁹⁴

⁹² C. Lazzarini, in: *NSW Government Hansard reports*, 3 March, 1936, p 2314.

⁹³ J. Ness, in: *ibid*, p. 2319.

⁹⁴ *Ibid*: pp. 2313-2333.

Despite the support of Ness, Lazzarini's motion was deflected by political partisanship. In the absence of the Bertram Stevens Conservative government's colonial secretary and responsible minister Captain Chaffey, parliament moved to adjourn, giving the government time to decide how to proceed. Upon re-adjournment Chaffey announced that a Royal Commission would instead be appointed to investigate the matter.⁹⁵ Rather than the internally appointed body Lazzarini had proposed, the investigation would be conducted by an external body appointed by the government. For Lazzarini this was anathema. He argued that a Royal Commission would amount to a 'whitewashing,' and be stacked with the government's 'friends' from the police force.⁹⁶ To Lazzarini's contention however, came the government reply with equal rhetorical flair that a select committee 'would not be competent,' as 'its members would be both the accusers and the judges.'⁹⁷ A Commission was issued to Judge Horace Markell, a district court Judge from Sydney's North Shore, with directions to commence that month.

It is unclear why the government agreed to investigate the issue at all. It is unusual for any government to agree to an opposition motion, particularly when Stevens had so dutifully avoided Lazzarini's past attempts to have the issue 'ventilated.'⁹⁸ In an essay on Royal Commissions as an investigative mechanism, Scott Prasser has argued that as well as producing empirical findings, Royal Commissions are a functioning part of the Australian political system, and have been for most of its existence.⁹⁹ The shape, findings or even the existence of Royal Commissions he argues, cannot be separated from the broader political functionality they possess. For those in power, Royal Commissions can serve a range of political ends beyond the need to obtain empirical information on a particular policy issue or

⁹⁵ Lt-Colonel Bruxner in: *Ibid*, 10 March, 1936, p. 2150-1.

⁹⁶ Lazzarini, in: *Ibid*: p. 2448.

⁹⁷ *Ibid*.

⁹⁸ *Ibid*: March 3, 1936, p. 2314. Lazzarini had twice attempted to have the issue investigated, once in 1934, and once earlier that year.

⁹⁹ Scott Prasser, 'Royal Commissions and Public Inquiries: Scope and Uses,' in: Weller, Patrick, *Royal Commissions and the Making of Public Policy*, (Queensland: McMillan Education Australia, 1994), pp. 1-22.

problem. They can be used to bide time, re-enforce policy positions, investigate corruption in particular sectors or government agencies, help frame policy issues or put them on the backburner.¹⁰⁰ Whatever the combination of reasons, the Stevens government had little to gain in substantiating Lazzarini's claims, or fuelling his critique of police practices and government inaction. It is possible that the disquiet over the issue was becoming too great to ignore, or that they simply wanted to placate it. Although agreeing to conduct an investigation, doing so through a Royal Commission was a clear statement that it would be on their terms, rather than those of Lazzarini.

The Commission was detailed to examine the cases of individuals who brought allegations against the police in relation to the suppression of betting. This method, although allowing a thorough investigation of individual cases, was slow and in the allocated time only twenty-seven cases were examined, although many more were offered.¹⁰¹ It also constrained the Commission from investigating the wider context of the cases it heard. The Commission's terms of reference contained eight clauses relating to allegations made by the members of parliament. These clauses included: the 'framing' of individuals for betting offences, the giving of false evidence to procure convictions, the levelling of street-betting charges instead of the lesser hotel betting, arresting innocents, entering private homes 'without just cause,' assaulting members of the public, wrongful inducement to plead guilty and the targeting of minor persons rather than principals in betting organisations.¹⁰² A ninth term added a month into investigations was to include the acceptance of bribes.¹⁰³

¹⁰⁰ Ibid: pp. 7-8.

¹⁰¹ On April 22, 1936, p. 14 the *Sydney Morning Herald* reported that Markell had been receiving 'letters from the public,' and on May 6, p. 16, suggested that this number had reached as many as 20 000. Report of the Royal Commission of Inquiry into Certain Matters Arising from the Report of the Royal Commission on Police and Illicit Betting, selected papers; Boxes[9/2470.1]; [9/2473.1]; [9/2476], New South Wales Government, 1937 also contains a collection of complaints.

¹⁰² Markell, *Report 1936*, p. iii.

¹⁰³ See: Markell, in: 'Minutes of the Royal Commission of Inquiry into Allegations against the police in Connection with the Suppression of Illicit Betting,' Parliamentary papers, Joint Volumes 3, 1936, p. 93.

The Commission also contained a peculiar provision. Its terms of reference stipulated that cases could only be brought forward by three designated members of parliament. These members were Messrs Ness and Lazzarini as well as Mr Sanders, the Member for Willoughby in Sydney's North Shore.¹⁰⁴ Lazzarini was empowered to bring cases forward then, but not to judge them. The by-product of this requirement was that of the 27 cases presented before the Commission, eight came from Lazzarini's Marrickville electorate and six from the North shore. There was a small selection of cases from outside these electorates. A further five came from Sydney city, an area represented by John Shannon who had vocally supported Lazzarini's motion. There were also four from the NSW north coast, which, although the Commission had the whole state within its scope, were the only cases from outside of Sydney.

Commissioner Markell's approach to the evidence presented to him matched these provisions. Above all, he was painstaking, methodical and set a high standard of proof. In the Commission's final report he described a two-fold approach to his task. Markell limited judgements to the question of culpability in individual cases and maintained that guilt needed to be proven 'beyond reasonable doubt' before an adverse finding could be made.¹⁰⁵ As Richard Evans has noted in his study of the Commission, Markell treated his task 'as if a criminal trial.' He talked in the final report of 'charges' against the officers, and in concluding them produced verdicts of 'guilty' or 'unproven within the meaning of the Commission's terms of reference.'¹⁰⁶

¹⁰⁴ Markell, *Report*, p. iv.

¹⁰⁵ Ibid.

¹⁰⁶ Evans, *Mackay*, p. 208.

Charges ‘Proved:’ Policing Rules and Practice in Betting Suppression

In the Commission’s opening days senior police officers gave evidence about procedures, strategies and tactics adopted in the enforcement of betting laws. William MacKay – by then NSW police Commissioner – and Sergeant First-Class William Keefe, who was in charge of betting suppression, described in detail the organisation of this work.

Betting suppression was the responsibility of all police officers no matter where stationed, but was also subject to a system of centralised control. For this purpose, Sydney’s twenty metropolitan policing divisions were grouped into four areas: A, B, C and D. Each of these areas comprised four or five divisions and was under the charge of a Sergeant who monitored betting across their area and the performance of the officers under them.¹⁰⁷ There was also the “special squad”. This squad was a small group of officers who operated out of police headquarters. Not attached to any policing division, they were often referred to as the “flying squad” because of the speed afforded them by a motor car as they moved unannounced between divisions.¹⁰⁸ This squad made betting raids across Sydney, often dealing with more difficult cases. Similar squads were formed from time to time in regional centres.¹⁰⁹ Men involved in this work were ‘specially picked,’ and if not in command, were rotated monthly so their faces remained unfamiliar.¹¹⁰

Betting arrests were usually made during police raids. An arrest required evidence of betting such as possession of betting slips, lead pencils and sporting cards or sizeable sums of money, often in small change.¹¹¹ By MacKay’s rules moreover, an arrest required at least

¹⁰⁷ Keefe in: *Minutes*, p. 95. In his evidence, Keefe explained that Division A covered the North-East of Sydney, Division B took in the North-East, Division C the South-East and D the South West.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ In: *Ibid*, Keefe explained that Betting with SP bookmakers, was often done in small denominations and over multiple races. Finding a suspected individual to be in possession of large quantities of change then, was often treated as suspicious.

two witnessing police officers to be present. Betting raids were designed to catch bettors in action, and were generally conducted on race days in places where betting was suspected, observed or had been complained of by members of the community. Working in plain clothes, raiding officers relied on fitting into their surrounds. They would look, Keefe explained, ‘just like a man going in for a drink.’ Generally, junior officers carried out each raid, supervised from a distance by a senior officer who was usually more recognisable to bettors.¹¹² Two or more officers were sent into an hotel or betting shop five or ten minutes before a race was scheduled to begin.¹¹³ Once inside, officers would attempt to procure evidence of betting, either by placing bets themselves, or observing multiple betting transactions. While ideally a senior officer would be called in to corroborate, Keefe stated that ‘in the majority of cases [...] it is the young Constables [who] do the arresting.’¹¹⁴ Police sometimes employed agents, otherwise known as police informants, “pimps” or “phizzgigs.”¹¹⁵ These were non-police individuals useful to the police for knowledge or access, usually in exchange for payment. This was a controversial policing tactic, MacKay himself testified that he ‘[did] not like them,’ and had sought actively to reduce their use in policing.¹¹⁶

As the Commission heard individual cases however, it became apparent that the rules and procedures outlined by MacKay and Keefe were merely templates. Indeed, Reiner has argued that one feature of police culture is that although there is only one rulebook there are three sets of rules. In the first place there are “working rules”, those actually followed on a daily basis, then there are “inhibiting rules”, regulations that are followed because they

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ “Pimp” and “Phizzgig” were common usage terms. More formally, these individuals were referred to as police agents or informers.

¹¹⁶ MacKay, in: *Evidence*, p. Citing figures dating from 1932, when he had become Metropolitan Superintendent, MacKay showed that payments for police agents had dropped from around twelve-and-a-half percent of fines collected to five-sixths of one percent.

pertain to visible behaviour, and finally “presentation rules”, which are those stated publically. Legal rules he argues ‘are neither irrelevant to nor completely determining of police practice.’¹¹⁷ Before the Royal Commission, MacKay and Keefe had described the latter, while the remainder of Commission’s evidence revealed the operation of the former two.

In connection with the Commission’s investigation of twenty-seven individual cases, fifty-six police officers were called forward, forty-five of whom faced charges in one or more case.¹¹⁸ Eight of those facing charges were police agents. The most common charges were deliberate framing, the giving of false evidence, and the arrest of individuals known to be innocent. Frequently, these charges were levelled as a package. Indeed in eighteen of the twenty-seven cases one or more officers were charged with all three. Thirty-one officers faced charges of this nature, against ten of whom one or more of these charges were proven. In eleven of these cases it was found that the complainant had not been betting on the day of their arrest.

Ernest William Howe for example, was arrested in October 1932 for street betting and resisting arrest, offences for which he was found guilty and fined respectively £20 and £1. He had been arrested by Sergeant Christensen and Constable Donnelly, aided by police agent Lynch. The evidence against him was his possession of a betting book, and of a sum of £5 15s 9. At the police court, and again before the Commission, Sergeant Christensen, Constable Donnelly and Agent Lynch stated that they had been on the Pacific highway in North Sydney on Christensen’s instructions. Hearing Howe take bets on horses named “Bondi Mary,” “Wolopin” and “Whisper,” they later heard him telling a man who had ‘picked a winner’ that he would pay him inside.¹¹⁹ Approaching him at the bar, they stated,

¹¹⁷ Reiner, *Politics of the Police*, p. 117.

¹¹⁸ There were 86 police officers in total who appeared before the Commission, but the 54 who had been involved in a particular case.

¹¹⁹ Donnelly and Lynch, in: *Report*, pp. 39-40.

Howe had made to remove something from his pocket, but was stopped by Donnelly. Howe was arrested but struggled violently and had to be hand-cuffed, particularly as there was a hostile crowd of onlookers. At the station a betting book was found in the pocket he had previously attempted to empty.¹²⁰

Howe denied that he had been betting on the day in question. He said that the money possessed was for an insurance payment, and had been ‘punting,’ but not receiving bets on the day in question.¹²¹ He also denied resisting arrest. Rather, he stated that outside the hotel Lynch had grabbed his arm, and when he had protested, his arm had been twisted up behind his back. When the hotel crowd expressed disapproval of Lynch’s actions, Lynch had drawn his pistol, and after pointing it at the crowd, jabbed it into Howe’s side. Howe further stated that during the course of his interview at the police station he had been slapped repeatedly and kicked across the room. Howe told them that they had no evidence and Lynch had replied ‘oh, never mind, we have plenty of evidence to fix you this time; I have plenty of cloakroom tickets.’¹²²

At the commission, Howe produced a number of witnesses corroborating his version of events at the pub. Further Mr Lilamond, a Starting-Price bettor claimed ownership of the betting book, and matched his handwriting to that inside it. Unsurprisingly, the events at the police station were unable to be verified. In the commission’s final report, Markell found that Howe should not have been arrested for betting on the day in question and that Constable Donnelly was guilty of wrongfully arresting Howe and of falsifying evidence to procure his conviction. Lynch was also found guilty of the latter infringement.¹²³

¹²⁰ Ibid.

¹²¹ Punting is the placing of bets with a bookmaker. During the period in question, this activity was not punishable by law.

¹²² Howe, quoting Lynch in: *Report*, p. 41.

¹²³ Markell in: *Ibid.* p. 46.

This pattern was revealed in a number of cases. In Henry George Farmer's case it was shown that Constable Bradbury and Police Agent Mooney had planted betting slips in Farmer's house and then lied about it in court.¹²⁴ In Thomas Dawson's case, a large collection of witnesses established that Dawson had been playing dominoes, not betting on the day of his arrest. It was also found that Constable Fletcher, the key officer affecting the arrest, had not only invented evidence about Dawson's activities, but attempted to explain his procedure in a series of movements shown to be impossible in the time he alleged.¹²⁵

In one set of cases, these tactics were shown to have been repeated systematically by a group of officers. Four of the complaints before the commission emerged as the result of a "flying-squad" tour of the New South Wales north coast. Owen Jurd presented corroborated testimony that Constable Ashton and Agent Webster, under the supervision of Sergeant Hungerford, had presented false evidence at the police court where Jurd was tried and found guilty of a betting offence resulting in a substantial fine.¹²⁶ Likewise, it was shown that Vincent Curran, a mail contractor from Dungog, NSW, had been on his mail route at the time of a race yet was accused by police and convicted of having taken bets on it. Constable Ashton's actions were also called into question twice more in similar cases. Although not charged under the commission's terms, he was found to have mistakenly arrested Arthur Curtis of Port Macquarie in January 1934 and George Ridley in December 1935, both under circumstances where the individuals had been clearly innocent.¹²⁷

The commission's investigations also revealed a small collection of other police infringements. Amongst the cases tested, there were three officers charged with illegal entry, and seven with wrongfully inducing a defendant to plead guilty. The investigation of Mrs

¹²⁴ See Farmer's case in: *Ibid.*

¹²⁵ See Dawson's case in: *Ibid.*, pp. 30 -3.

¹²⁶ See Jurd's case in: *Ibid.*, pp. 60-4.

¹²⁷ See Ridley's case in: *Ibid.*, pp. 102 -7.

Sarah Fisher's complaint against Sergeant Gallivan of the Petersham division for example, found that he had 'entered and raided on the day concerned, the house of Mrs Fisher without just cause.'¹²⁸ The officers involved had accused her husband, absent at the time, of being a bettor and rifled her household items leaving them in a messy state. More alarmingly, they had been in plain clothes and failed to identify themselves as police upon arrival, nor had they produced a warrant on Fisher's request.¹²⁹ Similarly, it was found that Constable Kuschert had wrongfully urged John Ray Atkinson to plead guilty just before his hearing for a betting charge in early 1936. Approaching him and his father-in-law in the court chamber, Kuschert told them he had seen the case's evidence. Responding to their plans to 'fight' the charge, he convinced them that 'you are not in the race.'¹³⁰ Atkinson had trusted him and pleaded guilty, when on the available evidence Markell found it extremely unlikely that he would have been convicted.¹³¹

For victims of police mistreatment there were several courses of action. Three of the individuals before the commission had successfully appealed their convictions, and five had attempted but had their appeals dismissed. Six others had had their fines reduced on application to the Minister for Justice and one man, Alexander Spiers, even had his fully refunded. In one case, that of Vincent Curran the presiding Judges had made unfavourable comment against the police involved, and the charges against him had been dismissed.¹³² Other instances brought up in parliament or the newspapers suggest that this did occasionally happen, but as a proportion of total betting arrests and amongst those presented before the commission this seems to have been the exception rather than the rule.

¹²⁸ Statement of Fisher's evidence in: *Ibid* p. 37.

¹²⁹ See Fisher's Case in: *Ibid*, pp. 37-9.

¹³⁰ Atkinson in: *Ibid*, p. 4.

¹³¹ See Atkinson's case in: *Ibid*, pp. 2-6.

¹³² See Jurd's Case in: *Ibid*, pp. 60-4.

The obvious flip side to these practices was that the members of the justice system were accepting falsified or inadequate evidence. While the commission made no findings on this aspect of the allegations, which was arguably outside its terms of reference, instances of attempts to influence court room proceedings abound in the commission's evidence. As was shown in Atkinson's case, urging an individual to plead guilty was one such recourse. More than this however, the commission's cases suggested that judges often gave police evidence the benefit of the doubt. In court and before the commission officers giving evidence were invariably clear and well-presented, with watertight stories. Such clarity it seems was often rewarded. Janet Chan has argued that police officers often enjoy 'significant advantages' in courtroom settings, because they are generally 'competent in handling themselves during investigative interviews and courtroom examinations.'¹³³ There was no doubt an element of this, but evidence emerging during the commission suggested that they were equally well-schooled in manipulating legal proceedings. It was suggested during the commission that police were conferring on evidence. In Dawson's case it was shown that officers had aided a police agent in writing their statement before their appearance in court.¹³⁴ On June 5 moreover, a journalist from the Sydney Morning Herald reported that the previous morning Sergeant Sweeting and Constable Gregory, both appearing in relation to George Ridley's case, had been found discussing evidence on a seat near St James station.¹³⁵

Indeed, police officers in all but one case demonstrated solidarity in the face of thorough cross-examination. Both Reiner and Punch have contended that there is 'a powerful code that enjoins officers to back each other up in the face of external investigation.'¹³⁶ Evans has called this phenomenon the "code of silence" in language that likens it to the practice

¹³³ Janet Chan in: David Dixon (Ed), *A Culture of Corruption: Changing an Australian Police Service*, (Sydney: Hawkins Press, 1999), p. 123.

¹³⁴ Markell in: *Report*, p. 32.

¹³⁵ 'SP Betting, Talk in Park,' *The Sydney Morning Herald*, June 5, 1936, p. 11.

¹³⁶ Maurice Punch, *Conduct Unbecoming*, pp. 3-5; Robert Reiner, *The Politics of the Police*, pp. 115-9.

commonly associated with organised criminals.¹³⁷ In the collection of cases from the NSW North Coast for example, police infringements were proven by evidence other than police testimony, as the police officers involved all had consistent stories accounting for each other's behaviour. In fact, the police actions and behaviour in these cases were often indistinguishable from those who were found to have acted honestly; the difference was the existence of evidence proving the police accounts were flawed, and in some instances blatant fabrications.

The procuring of search warrants was shown to be similarly problematic. Warrants to authorise the entry and search of an individual's private property required the authorising signature of a court magistrate or Justice of the Peace. The processes surrounding warrants were also outside the commission's terms of reference, but were highlighted during Anthony Oswald Kelly's case. Kelly had been arrested by the police on 27 January 1934 for using his hairdressing and tobacconist business for betting and fined £20 upon his conviction, and the police involved were being considered for wrongful arrest and falsifying evidence, although neither was proved.¹³⁸ In his introduction to the case however, Mr Cassidy, who appeared on behalf of Messrs Lazzarini, Ness and Sanders stated: 'I am going to suggest that they [the police] have a practice there, [...] of getting their search warrants signed in blank.'¹³⁹ The source of his accusation was a search warrant that Sergeant Gallivan had produced when he had entered Kelly's residence for his arrest, and which was produced in the police court and before the commission. The evidence on which Gallivan presented to justify Kelly's arrest was obtained only a few hours prior to the police visit to his shop without a return visit to the

¹³⁷ Richard Evans, *MacKay*, 233-5.

¹³⁸ Markell, in: *Report 1936*, p. 65.

¹³⁹ J. E. Cassidy, in: *Minutes 1936*: p. 605.

police station in the interim, indicating that he had signed forms ready for any search and needed only to fill in the requisite details.¹⁴⁰

The man who had signed the warrant was Mr Ernest Bowen, a Tailor and justice of the peace. Before the commission, it was established that Bowen had also signed warrants for a number of senior police officers including the then-retired Inspector Russell, Sergeants Keefe and Jennings. He denied ever signing warrants in blank. When asked to describe the procedure by which warrants were authorised he stated that the officers first ‘swear the contents, swear that they are true to the best of their belief by the bible, then I sign it and read the information.’¹⁴¹ When pressed however, he further stated that ‘on a Friday night they might come up when I am busy, and if there are two [warrants] together, there is usually the information on the top; I read that and I turn the bottom up [...] If I am very busy I might not read the warrant.’ In response to Mr Cassidy’s request for clarification, Bowen stated that ‘I trust the officer who swears that it is true.’¹⁴²

Efforts to ‘Defeat the Police:’ Betting Culture and Police Surveillance

Amidst the allegations, the Commission’s evidence also provided some context for police behaviour. Keefe and MacKay emphasised that not only was SP betting a widespread and popular activity, bettors often posed obstacles to law enforcement. As such, police often had ‘information about them without being able to get the evidence’ necessary for a conviction.¹⁴³ SP bettors, the commission was told, had a range of strategies to ‘defeat the police.’¹⁴⁴ Ever savvy to police tactics, bettors in hotels and small businesses set up elaborate systems of

¹⁴⁰ See Kelly’s case in: *Report 1936*, pp. 65-71.

¹⁴¹ E. M. Bowen, in: *Minutes 1936*, p. 704.

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

¹⁴⁴ Richard Windeyer, in: *Minutes 1936*, p. 95.

security. ‘Scouts’ or ‘cockatoos’ were employed as lookouts and bettors memorised bets or used ‘self-erasing pads’ to record them.¹⁴⁵ Betting slips could be hidden in ‘secret panels and drawers’ or yet more inventive hiding places.¹⁴⁶ Betting businesses moreover, were organised and run with the police in mind. Principals, ‘well known or suspected,’ Keefe told the commission, ‘[did] not take an active part in the operations at all,’ and agents or runners were instead employed, often on a commission basis.¹⁴⁷

For bettors caught in the act, strategies to prevent arrest came into play. Disposal of evidence was one such tactic. Along with the hiding of slips, the commission recorded instances of their being thrown into fires, flushed down toilets and thrown over fences into neighbour’s gardens where the police would need a warrant to search. Police were often unsuccessful in pursuing charges when this had been the case. The other option was to simply deny the charge. As we have seen, in case after case it had been shown that police had arrested defendants by claiming to have evidence of betting which they didn’t have, perhaps hoping to elicit a confession and obtain leverage with the promise of a light fine. The bluff however, was often called. To allegations of betting made by the police, the claim that “I’ve never taken a bet in my life,” was repeated almost like a mantra.

The testimony of those bringing cases forward could also provide detailed insight into the operations of betting businesses, often beyond what police could see. SP businesses could be busy and profitable, and indeed often employed more than one agent or clerk, along with the “principal”. Alfred James Ingram told the commission that he employed two or three clerks

¹⁴⁵ In: *Minutes 1936*, p. 623, Sergeant Gallivan stated that ‘it is quite a common occurrence for S. P. bettors to memorise a large number of bets without committing anything to paper,’ claiming that ‘in one instance recently an S.P. bettor boasted that he could memorise at least 200 bets and as proof he was willing to be tested in the matter.’

¹⁴⁶ Keefe, W. in: *Minutes 1936*, p. 95. Keefe further stated that: ‘Bets can also be removed from slates; secret panels and drawers have been found. On another occasion there was a box of sunlight soap, a box made similar to a cake of sunlight soap of the same weight and everything. It was hollow and a receptacle for betting material. [...] Grooves have been cut in the top of the door [...], on one occasion I heard there was a false bottom on a vinegar cask [...] It has been found that women secrete betting material on their persons.’

¹⁴⁷ *Ibid.*

in his betting business that he had run out of a room in the North Sydney Hotel. These clerks would sit at a table and ‘work [the] sheets,’ posting prices and recording bets on sheets of foolscap paper.¹⁴⁸ As well as obviating the need for him to risk conviction, these employees were necessary to cope with the volume of trade his business received. Prior to races he reported that there could be up to 100 people in his room at a time: ‘you could not move, they were packed for a minute or two just prior to getting bets on.’¹⁴⁹ A race, Ingram told the commission, could take between £10 and £60 pounds and on ‘decent’ days, total takings could be as high as £300 or £350. Ingram also explained that he got his odds and prices information from a firm named “Telesports,” a company that supplied racing odds and prices to paying clientele over the telephone. These odds were posted on a sheet of paper on the wall and known as “board prices”. If a customer did not like those prices, they could place their bet and have it paid on the prices published the next day in the *Herald*.¹⁵⁰

Betting businesses were not always run so openly. Benjamin Taylor conducted business over the telephone. Operating out of rented premises, he had started his business by attracting customers from amongst ‘reliable’ friends and acquaintances by word of mouth.¹⁵¹ As his trade grew, he employed three agents who telephoned bets to him from amongst their own contacts. He was shut down after ‘12 or 18 months’ in 1934 however, and vowed to ‘give it up.’¹⁵² He told the commission that it was not uncommon for telephones to be installed under false names because they were disconnected immediately following betting convictions.

For those acting as agents or clerks, their work depended on the location and organisation of the business, and the volume of trade it received. Mr Lilamond, who appeared before the commission in relation to Howe’s case, had worked as a clerk for three different “principals”.

¹⁴⁸ Alfred Ingram, in: *Minutes 1936*, p. 100.

¹⁴⁹ *Ibid*.

¹⁵⁰ *Ibid*.

¹⁵¹ Benjamin Taylor in: *Ibid*, p.569.

¹⁵² *Ibid*: p. 561.

At the time of Howe's arrest, he was working at the Union Hotel in North Sydney, for a principal he knew only by the name of "Nugget".¹⁵³ At this time, there were three bookmakers operating out of the hotel, and when asked about business, he explained that it 'would depend upon what share I got of the bets' at the hotel that day. In his estimation, of the betting carried out in that hotel, roughly three-quarters was 'straight-out' betting on published odds, while around one quarter 'would be "tote" betting,' which he felt was 'the regular thing.'¹⁵⁴ As a 'precaution' however, he would often write "tote-odds only" on top of his betting sheets.¹⁵⁵ That way, if caught he would be charged with the lesser tote betting offence. His principal would handle the payouts, and Lilamond was paid on commission. Fredrick Percival Pateman the other hand, who alleged that Sergeant Jennings had unlawfully entered his house, rang bets away for friends. He operated out of his home, on a casual basis amongst a small clientele with whom he was well acquainted.¹⁵⁶

The commission's evidence also revealed familiarity between bettors. Amongst those appearing from North Sydney, Taylor reported that James Kerr was a regular customer at his shop and that he occasionally took bets from him.¹⁵⁷ He also stated that he had known Ingram and Pateman for a number of years.¹⁵⁸ Parker knew Ingram 'by repute,'¹⁵⁹ and had also advised Pateman, who it was alleged placed bets with Taylor, to come forward at the Royal Commission.¹⁶⁰ If not personally acquainted with one another, these men all demonstrated an awareness and familiarity with the shape of the betting market, who were the major operators and where they set up shop. More than this, their complaints all

¹⁵³ Edward Lilamond, in: *Ibid*, p. 772.

¹⁵⁴ *Ibid*: p. 780.

¹⁵⁵ *Ibid*.

¹⁵⁶ George Parker, in: *Ibid*, p. 295.

¹⁵⁷ Taylor, Benjamin in: *Ibid*, pp. 564-5.

¹⁵⁸ *Ibid*, p. 566, also Pateman in: *Ibid*: p. 570.

¹⁵⁹ George Parker, in: *Minutes 1936*, p. 294.

¹⁶⁰ In *Minutes 1936*: Although there was some confusion over the issue and it remained unproven, Benjamin Taylor believed, although later changed his testimony over the issue, that the telephone number for his betting business was X3060; (p. 570-1). This was the same number that Pateman said he rung to place his bets; (p. 41).

implicated the same collection of police officers. Sergeants Christensen and Jennings between them appeared in all these cases, and Constables Grant, Donnelly and Mooney all made multiple appearances in relation to them.

Equally, those complaining of unfair arrest were often associated with a betting milieu. Seven of the individuals appearing before the commission had at least one prior betting charge, some of which dated back as far as 1927.¹⁶¹ The majority wrongfully charged with betting had been “punting” on the day in question, had done so in the past or admitted to doing so on a regular basis. Many had betting slips on them or in their houses from that day or from previous transactions. Farmer was known to post racing odds and results in the window of his shop, as did several other licensees appearing before the commission.¹⁶² Those associating with bettors also left themselves vulnerable, particularly if they were known by the police. George Algernon Parker, who told the commission he had paid Constable Mooney £5 to ‘keep his eyes shut,’¹⁶³ was arrested for street betting after having taken money off an acquaintance to place a bet for him.¹⁶⁴

Collectively, the cases heard before the commission suggest that there was a large and thriving off-course betting industry. That bettors were taking active precautions against arrest, to the point of structuring their operations around policing tactics, suggests equally that the police were engaged in stamping it out. Markell’s findings had revealed however, that the police were employing nefarious tactics in doing so.

In some of the cases brought before the Commission it possible to speculate about police motives. Where the individual was a known bettor, it is reasonable to suppose that there

¹⁶¹ The commission’s report states that Breen had a prior charge in 1931, Curran in 1933, Howe in 1932, Ingram variously in 1930 - 4, Jordan in 1927, Parker faced numerous charges throughout the early 1930s and Pateman 1934 & 35 and Kelly had been convicted once previously in 1930.

¹⁶² Farmer in: *Minutes 1936*, pp. 14-15.

¹⁶³ Parker quoted in: *Report 1936*, p. 97.

¹⁶⁴ Parker, George in: *Minutes*, pp. 295-6.

could be a sense of informal justice at work; an easy moral slippage between convictions obtained fairly on evidence and the false conviction of an individual known to be guilty. There was perhaps even a certain thrill in the chase, or a joy in catching anyone they could, especially those already under suspicion. In any case, they were sufficiently unsupervised to make it unlikely they would be caught for overstepping the mark. In his evidence, MacKay had been careful to emphasise that he placed no pressure on his officers to make large numbers of arrests. In support of this claim he produced the speeches he had made to his staff during 1932 and 1934 expressing this very sentiment. Keenly aware as he no doubt was of the political tensions surrounding this work, MacKay's claims need not be treated as solely defensive. The Commission's findings made clear however, that this call had fallen on deaf ears.

The Commission revealed however, that police tactics went beyond catching known bettors. Not only had some innocent people been wrongfully or mistakenly arrested, they had been framed, entrapped and even convicted on falsified evidence. There can be few sanguine motivations for such behaviour. Most likely, as Ness had alleged in parliament, officers were making arrests to 'show their superiors they were doing something.' Why they felt this to be necessary is less clear. The search for professional advancement is one possibility, but it is also more than feasible that police were complicit in the betting industry, and needed to make arrests for the sake of keeping up appearances.

In his work on Australia's heroin traffic, Alfred McCoy has argued that 'an element of police protection is a basic requisite for a heroin distribution network which hopes to operate for any significant period of time.'¹⁶⁵ He explains that the nature of heroin addiction means that consumers require 'almost daily association with a street-level pusher, who in turn has to

¹⁶⁵ Alfred McCoy, *Drug Traffic: Narcotics and Organised Crime in Australia*, (Sydney: Harper and Row, 1980), pp. 29-30.

make regular contact with a wholesale distributor.’¹⁶⁶ As such, patterns of contact become predictable, leaving it vulnerable to exposure, and ‘no heroin distribution network could survive for long if responsible local police or Federal narcotics agents were not at least partially neutralised.’¹⁶⁷ Although betting businesses did not rely on chains of supply, except arguably for odds information, they did require regular and predictable contact with clients in specific locations. While a small betting business operating amongst a local clientele could perceivably escape the gaze of the police, a larger, more profitable business running out of a hotel certainly could not. That the SP industry was thriving seems unlikely to be solely the result of bettor’s tactics to ‘defeat the police.’

Charges ‘Not Proved:’ Ingram, Corruption and the Limits of the Commission

Parker’s claims that he had paid Mooney to ‘keep his eyes shut’ were not the only allegations of police complicity in betting businesses. Alfred Ingram alleged that over a period of twelve to eighteen months from 1934 he had paid Sergeant Jennings £20 a month for partial immunity to betting arrest. A builder by trade, Ingram stated that he had started a betting business at the North Sydney Hotel around 1930. By 1934, when Sergeant Jennings was assigned to betting work in the area, he had established himself as a principal, working with a clerk named Victor Hilton. Within days of Jennings’ arrival in North Sydney, Hilton had been arrested and convicted on betting charges, costing Ingram £30 in fines. As a result, Ingram had decided to explore the possibility of purchasing immunity from Jennings. He said he had approached Jennings at the North Sydney post office and asked ‘could I interest you in the betting business?’ and that Jennings had proposed his home in Allawah, in the

¹⁶⁶ Ibid: p. 30.

¹⁶⁷ Ibid.

South of Sydney, as a more suitable place to discuss terms.¹⁶⁸ At this meeting it was allegedly agreed that in return for partial protection, whereby Ingram's men would be only be arrested on a monthly basis, Ingram would pay Jennings £20 a month through Mr Cochrane, a hotel keeper in Surry Hills. Jennings would also warn Ingram of impending raids through Cochrane. It was alleged that this arrangement had endured until his partnership with Hilton broke down in 1935. Ingram's business had become unprofitable and he found that Jennings was no longer cooperative.¹⁶⁹

Jennings flatly denied the allegations. He told the Commission that upon his transfer to the North Sydney division he had quickly become aware of Ingram's activities, but had found him difficult to shut down. He said he had instructed his men to target him, but struggled to get evidence on Ingram himself and had as a result seen that the flying squad visited North Sydney on several occasions.¹⁷⁰

McCoy has further argued that 'corruption in any enforcement agency is a function of *needs, means and opportunity*.'¹⁷¹ That Ingram had the need, or at least saw the advantage in having some level of police protection seems clear. Betting fines, if incurred regularly, could be expensive, and regular interruption of trade by police raids was potentially ruinous. Being able to manage these things through an arrangement with the police was undoubtedly a good business move, and his business was turning a sufficient profit to ensure that he had the means to attain one. Likewise, Jennings certainly had the opportunity. A senior police officer in the North Sydney division, he was able to plan to raid, or not raid, any premises he chose. He would also have had considerable knowledge of the betting market; who the key operators were and where they were running their businesses. Indeed, Jennings initial

¹⁶⁸ Ingram in: *Evidence 1936*, p. 96.

¹⁶⁹ See Ingram's case in: *Ibid*, pp. 46-56.

¹⁷⁰ Summary of Sergeant Jennings' evidence in *Ibid*: p. 50.

¹⁷¹ McCoy, *Drug Traffic*, p. 31.

targeting of Ingram's men could even suggest that he knew Ingram was operating profitably and was encouraging him to offer some kind of arrangement.

Ingram's allegations are detailed and suggestive. Indeed Evans has even gone so far as to assume they were true.¹⁷² Before the inquiry however, no matter how deeply the questioning probed, the burden of proof proved elusive. Jennings, it was shown, had an impeccable record. He had reported multiple cases of attempted bribery in the past, had no previous marks against his professional name, and was personally vouched for by both high-ranking and divisional police officers, including special squad head William Keefe, and the then-retired Inspector Russell. Jennings' bank statements were produced, and his financial position thoroughly scrutinised, revealing no evidence of the chunky £20 instalments Ingram was alleged to have paid. He was however, unable to account for the arrest patterns of Ingram's men since his arrival in North Sydney, which police records showed to align with Ingram's evidence.¹⁷³ Ingram was acquainted with the décor of Jennings' Allawah house although Markell, having visited the premises, felt that Ingram's knowledge matched what could be seen through the window. Ingram also produced witnesses, including Cochrane, to corroborate the various elements of his story.

As the evidence unfolded Ingram's story, at once plausible but partial, really became Jennings' word against Ingram's. A bemused Markell, charged with forming a judgement and allocating culpability, declared:

In these circumstances it must be apparent to anyone that Mr Ingram's evidence must be scrutinised with the greatest care and that his bare word alone would certainly not be sufficient. I can point to nothing which convinces me that he is not telling the truth. It is a remarkable fact that in no respect has it

¹⁷² Evans, *MacKay*, pp. 198-221.

¹⁷³ Arrest Records in: SRNSW [9/2469]

been shown that anything which he said was demonstrably false. What struck me from the beginning was that it was difficult to think that anybody could successfully invent a story so complicated as that put forward by Mr Ingram without it becoming apparent at some stage that he was telling an untruth.¹⁷⁴

On the other hand however, Markell felt that:

The Sergeant's career in the police force is unblemished, and there was abundant evidence to show that his reputation was of the highest. These facts taken in conjunction with the matters to which I have already referred leaves only one finding possible, and that is that the charge has not been proved.¹⁷⁵

Ingram's case demonstrated the limits of the Commission's investigative ability. As Evans has noted, Markell had been presented with evidence of 'enormous value.'¹⁷⁶ 'It was,' he argues, 'a case study in the regulation of an illegal market by corrupt police, and the mechanics of the corrupt arrangements were laid out in painstaking detail.'¹⁷⁷

Notwithstanding, Markell's findings were inconclusive. Evans has argued that his 'caution and narrow focus' were to blame for leading him to 'a soft and limited conclusion.'¹⁷⁸

Markell's findings however, deserve greater contextualisation than this. The key question regarding Ingram's case is not whether corruption was evident, but why, in the face of such overwhelming evidence, Markell's findings were so 'soft' and 'limited.'

Above all, Markell was bound by the Commission's terms of reference. While the Commission's ambit, calling for the investigation of 'allegations against the police in connection with the suppression of illicit betting' was very broad, its terms of reference were

¹⁷⁴ Markell, in: *Report 1936*, p. 56.

¹⁷⁵ Ibid.

¹⁷⁶ Evans, *MacKay*, p. 216.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

not. Markell's task, before he had even begun to examine the Commission's evidence, was to an extent predetermined. He was presented with a small selection of cases and charged with determining what had happened, and whether any police involved had behaved in particular ways. Embodied in these terms then, was a particular notion of police malpractice which related it to individual actions; to a deviant officer who succumbs to temptation or opportunity. More recently, this approach has been called the "rotten apple" theory of police corruption.

Police corruption is a slippery concept. Popularly associated with a police officer "on the take", accepting a regular bribe or retainer to do or not do their duty, the question of pinpointing what this phenomenon is and how it works is more difficult. Maurice Punch has argued that police corruption is simply one facet of the broader umbrella of 'organisational deviance,' and that the term is too often 'pigeon-holed' with the police.¹⁷⁹ Mark Finnane has suggested that corruption has historically specific forms,¹⁸⁰ and McCoy has argued that it can be stratified according to the degree of complicity officers have with the illicit economies or practices they are informally regulating, or in which they are participating.¹⁸¹ Police corruption and malpractice are not new; indeed Finnane has found instances of police officers accepting bribes in the colonial police forces. Efforts to identify and target it, however, are only relatively recent, and have paralleled the development of a literature describing it in the second half of the twentieth-century. While the findings of the 1936 Commission do undoubtedly reveal the existence of some form of corruption in the police force to modern eyes, they didn't to those examining 'allegations against the police' in 1936. Indeed, members of parliament and those making complaints knew that things were amiss in the police force, but corruption wasn't the word they jumped for in describing it, nor was it what

¹⁷⁹ Punch, *Conduct Unbecoming*, pp. 1-21.

¹⁸⁰ Mark Finnane, *Police and Government*, pp. 170-1.

¹⁸¹ McCoy, *Drug Traffic*, pp. 29-37.

they targeted when they decided to investigate it. What the Commission lacked was a language of ‘corruption’ with which to frame the evidence before it.

This is not to say that the Commission could not have been more probing than it was. Police administration for example, was only minimally scrutinised. Only a small number of cases were presented, and several of the Commission’s terms of reference were left untouched when they could arguably have been pursued.¹⁸² Moreover, the role of the broader justice system in sanctioning police behaviour was almost entirely ignored. In creating these bounds, politics too played its role. The Stevens government were not in a position to receive adverse findings from a position of political strength, having refused Lazzarini’s requests for investigation twice in the past, and had every reason to frame the investigation on narrow terms.

Markell’s position in his findings is best described as equivocal. Any investigation creates an interpretive space, and in this instance it was one Markell left largely unfilled. Indeed, the bulk of his report’s short conclusions section was filled with observations about the role of telephones and radios in illegal betting businesses, statements emphasising the importance of police rules and a recommendation that discrepancies in the fines schedule of the Totalisator and Gaming and Betting Acts be levelled.¹⁸³ He did offer that the investigation had proven ‘justified,’ saying that he felt that ‘this inquiry has revealed a state of things which is, in my opinion, exceedingly serious.’¹⁸⁴ He was however, quick to qualify stating that ‘it must be kept in mind that the officers who have been found guilty represent a very small proportion of the total number of men engaged in this branch of police activity,’ even going so far as to suggest that the cases he had seen represented a ‘fair portion’ of those which might exist.¹⁸⁵

Markell was investigating a politically fraught subject, and his findings were revealing.

¹⁸² No charges were made of ‘assault or unlawful intimidation,’ the wrongful charging with street rather than hotel betting on the part of the police, nor did the commission investigate whether minors had been targeted instead of principals.

¹⁸³ Markell in: *Report 1936*, p. 117.

¹⁸⁴ *Ibid*: p. 116.

¹⁸⁵ Markell in: *Report 1936*, p. 116.

Drawing broader conclusions on cases that were unclear may have left him open to accusations of partisan posturing or a questioning of his personal integrity. It may even have risked miscarriages of justice for individuals appearing before the Commission. It is likely that his remarks were designed to appear concerned, but above all to be inoffensive, and strictly legalistic.

Despite this, the Commission offered a particular space for those appearing before it. Individuals bringing a case before the commission did so because they believed they had a claim to make against the police. The forum provided by the Commission was, however, as significant in determining the outcome of those claims as was their contents. For those who could provide evidence corroborating their allegations that proved they were the result of the actions of one or more individuals, the Commission provided a space to rectify any injustice endured. The Commission struggled however, with claims that implicated both the police and the claimant. As we have seen, the police proved more than willing to support each other, by hiding or denying each other's indiscretions. Likewise, those operating as SP bookmakers had everything to gain in discrediting the police if they had found them uncooperative, as Ingram had found Jennings. As such, complaints like Ingram's plagued the Commission, suggesting that there was something lurking underneath, things that were plausible but inaccessible, or in the language of the Commission, 'not proved.'

Indeed this dynamic largely defined the Commission and its findings. There was one case however, which slipped through the net and simply could not be ignored. This case came from Ness' electorate of Dulwich Hill, that of William George Mowlds.

Chapter 3

William George Mowlds was arrested and charged with street betting on 18 November 1933, at his smallgoods business at 509 Marrickville Road, Dulwich Hill. Sergeant Gallivan, Constables Nelson, Perrett and Miller were involved in his arrest. Except for Miller, all these officers gave evidence when Mowlds' case was heard in the police court. In their account, Gallivan had given Perrett, Miller and Nelson instructions at Petersham police station around 11:15am, and the three men had proceeded to Marrickville road by tram. From a vantage point near Mowlds' shop, they had observed Mowlds take two bets on a horse named "Black Cat", before proceeding back into his shop. Nelson had followed Mowlds inside and, standing near the shop counter, he heard Mowlds ringing the bets away to a man named Ted on a telephone in the room behind the shop floor. Nelson left the shop and returned to Petersham police station.¹⁸⁶

At the station, Nelson told Gallivan what he had seen and the two men returned by car to Mowlds' shop, where Constables Perrett and Miller were waiting. Gallivan, Nelson and Miller entered the shop, and upon finding Mowlds, Nelson stated that this was the man he had seen betting, and Perrett affirmed Mowlds' identity. Mowlds responded that he had never taken a bet in his life. When searched, a number of betting slips were found in his pocket and Mowlds, it was alleged, went silent. In cross-examination Gallivan agreed that

¹⁸⁶ Markell, *Report 1936*, pp. 88-96.

these slips related to another day's racing, but that there were multiple slips for the same horse. Mowlds was taken back to the Petersham police station and charged. A sum of £3 4s 10d. was found in his possession in small denominations.¹⁸⁷

In his defence, Mowlds stated that on the day in question he was preparing for a visit to Newcastle, and had ordered a taxi for 12:15. A number of men were undertaking the journey, and one of them, Mr Thackeray, testified that this was the case. That morning Mowlds said that he had been busy preparing for his trip. He had not been on the footpath since he had swept it at 8:00 am. Mowlds insisted that he was not a bookmaker; 'I still say I never took a bet in my life,' clarifying that 'I have made bets with a bookmaker, but I have never been the bookmaker.'¹⁸⁸ He confirmed having betting slips from another day on his person, but said that they were from bets made, not taken. He outlined recent bets, and explained that 'I often back the same horse in the one race two or three times,' although did not explain the logic behind this practice.¹⁸⁹ Mowlds was convicted on 27 November 1933 and fined £20.

In many ways, the facts of Mowlds case are unremarkable. And this is how it would have remained, had it not been for the actions of Constable Miller. Within a few days of Mowlds conviction, Miller had a conversation with a friend of Mowlds' named Mr Williams. In this conversation, Miller stated that he did not think Mowlds had been betting on the day of his arrest; that he had been framed. From here, the case took on a life of its own, becoming the subject first of an internal police investigation, then appearing at the 1936 Royal Commission into the policing of illicit betting, and finally, as we shall see in this chapter, Mowlds' case became the subject of a further Royal Commission. This case provides a telling glimpse into the organisational culture of the NSW police in the 1930s.

¹⁸⁷ Ibid.

¹⁸⁸ SRNSW: Report of the Royal Commission of Inquiry into Certain Matters Arising from the Report of the Royal Commission on Police and Illicit Betting, selected papers [9/2470].

¹⁸⁹ Ibid.

Following his conversation with Constable Miller, Williams passed what he had been told onto Mowlds. On 4 December, Mowlds contacted Inspector Russell, who was at that time supervising betting squads. Mowlds asked the Inspector to speak with Constable Miller, which he did.¹⁹⁰ Following an interview with Miller, Inspector Russell furnished a report on 22 December. Miller's evidence was that none of the officers involved in Mowlds' arrest had been at his shop until all four of them went there to arrest him. Nelson and Perrett could not have observed Mowlds betting the morning they arrested him. 'It was' Miller had stated, 'a put-up job.'¹⁹¹

Interestingly, Miller's statement found an unexpected corroborator in Inspector Russell who stated in the concluding paragraph of his report:

I might state that on November 18th, a few minutes to 12 noon, I was seated in the rear of a tramcar – Balmain to Dulwich Hill – in New Canterbury Road, and just after the tram had passed Morton Park, which is midway between Toothill and Eltham Streets, I saw Sergeant Gallivan driving a motor car with three men passengers, one of whom, in the back seat, I recognised as Constable Miller.¹⁹²

Russell's chance recollection conflicted with the account given by the three officers in the police court. According to their evidence, at this point in the journey, the car should have contained only Sergeant Gallivan and Constable Nelson.

On 9 December Russell personally visited Mowlds' shop. Here, Russell assured Mowlds that he had interviewed Constable Miller and that a departmental investigation would ensue.

Mowlds was advised to attend Police Headquarters and make a formal statement, which he

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

¹⁹² Ibid.

did on 14 December. In this statement he put in writing his version of his arrest and his conversation with Mr Williams. He also added that when Russell had visited his shop, he had drawn his attention ‘to the situation of my telephone in the shop.’¹⁹³ This, he believed, was a key detail. Mowlds firmly asserted that it would be ‘a matter of impossibility’ for anyone to see or hear someone on the phone from the position that Constable Nelson said he had taken on the day of Mowlds’ arrest.¹⁹⁴

Mowlds written statement, taken without an interview, was the first in the Departmental Inquiry Inspector Russell had promised. This inquiry was undertaken by Inspector Fergusson and involved the interrogation of the four police officers involved in Mowlds’ arrest. On 22 December, Constable Miller was shown what Mowlds had written, and was interviewed by Inspectors Russell and Fergusson. Constables Nelson and Perrett were also interviewed having been given the opportunity of reading Mowlds’ and Miller’s statements. Perrett was also given the police court depositions of Gallivan and Nelson to read before his interview. On 27 December, Sergeant Gallivan made a written statement having been presented with the entire evidence.¹⁹⁵

The evidence given by Gallivan, Nelson and Perrett in this investigation is significant. Critically, regarding the question of how the four officers came to arrive at Mowlds shop, their evidence had changed. Gallivan told the inquiry that he and Nelson had picked up Perrett and Miller along New Canterbury Road, rather than meeting them at Mowlds’ shop and Perrett concurred. As to the question of exactly where along New Canterbury Road, the men were vague.¹⁹⁶ Nelson on the other hand, stated that after observing Mowlds’ betting transactions, he, Perrett and Miller all returned to the police station and the four of them left

¹⁹³ Ibid.

¹⁹⁴ Ibid.

¹⁹⁵ Ibid.

¹⁹⁶ *Report 1936, pp. 89-94; SRNSW: [9/2470].*

the station together in the car. The day following his interview however, he altered his statement to say that he and Gallivan had picked up Perrett and Miller on the way.¹⁹⁷

In his report on this investigation, Inspector Fergusson stated that he believed Sergeant Gallivan and Constables Nelson and Perrett were telling the truth.

Fergusson was ‘of the opinion that Mowlds [was] undoubtedly an SP bettor,’ and believed he had sought an inquiry solely to ‘get even’ with the police.¹⁹⁸ Fergusson said that he had been informed by:

An independent and reliable man residing in the same locality that, since the day of the raid, Mowlds has boasted that the police failed to find the papers in his possession showing a record of his betting transactions on that day.¹⁹⁹

Miller received adverse comment. Fergusson had been thoroughly unimpressed with him as witness, describing him as ‘untruthful’ and his actions as ‘incomprehensible.’²⁰⁰ He felt that Miller’s motivation could only have been ‘jealousy’ between himself, Perrett and Nelson.²⁰¹ More than this, he alleged cryptically that Miller had desired to help Mowlds due to their mutual membership of ‘a certain organisation.’²⁰² He concluded that ‘the position concerning Constable Miller is most unsatisfactory,’²⁰³ and had ‘no hesitation in recommending that he be not employed in any secretive capacity whatever but directed to revert to ordinary uniform duty forthwith.’²⁰⁴ Fergusson had noted the discrepancies in the evidence regarding how the four men came to be at Mowlds’ shop, but believed that Sergeant Gallivan had adequately explained this aspect of the case.

¹⁹⁷ Ibid.

¹⁹⁸ SRNSW: [9/2470].

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

²⁰¹ Ibid.

²⁰² Ibid.

²⁰³ Ibid.

²⁰⁴ Ibid.

Here the matter rested, until brought up before the Royal Commission. Here, Mowlds account of his arrest was the as in his statements and police court evidence, and Miller's account was as per his statement at the departmental inquiry. In their evidence however, Gallivan, Perrett and Nelson presented yet another version of events. On the way to Mowlds shop the Commission was told, Miller and Perrett had been picked up separately, Constable Perrett first, and Miller a few hundred yards further along New Canterbury Road.²⁰⁵

Commenting on the apparent discrepancies, Markell concluded that:

During the inquiry [...], it became apparent that the fact that the Inspector had seen the four of them together in the car on their way to Mr Mowlds' shop was entirely inconsistent with the evidence that they gave in the police court and I have no doubt that some attempt was made by these men to adjust their evidence to meet the altered conditions.²⁰⁶

Markell found that Gallivan, Nelson and Perrett had 'framed' Mowlds and given false evidence to procure his conviction.²⁰⁷ In his report, Markell commented unfavourably on Fergusson's findings, and Mr Windeyer KC who appeared to represent the Commission stated that he found them 'inexplicable.' 'It follows from my finding,' Markell stated, 'that I disagree with that of Inspector [Fergusson].'²⁰⁸ He withheld however, from recommending against him, as Fergusson was out of the country and unable to give evidence or explain his finding.

Markell also made a 'special comment' regarding Constable Miller, who had been taken off plain-clothes work following Fergusson's recommendations. 'I can only say, that to my

²⁰⁵ Markell, *Report 1937*, pp. 89-94.

²⁰⁶ Ibid: p. 94.

²⁰⁷ Ibid.

²⁰⁸ Ibid: p. 95.

mind,' Markell wrote, 'Constable Miller, in very trying circumstances, showed a standard of honourable conduct and regard for the truth which reflects great credit on him.'²⁰⁹

In the months following the Royal Commission, Miller became an even more significant figure in the public debate around SP betting and its policing.

The “Miller Case” and the 1937 Commission

On November 30 1936, the report of the Royal Commission provided by Judge Markell was placed before the NSW State Parliament. The following day the Premier, Bertram Stevens, announced that the Colonial Secretary had 'direct[ed] the Acting-Commissioner of Police to suspend from duty immediately all members of the police force found guilty of charges referred to by judge Markell in his report, as well as all those members involved in the Judge's adverse comments.'²¹⁰ Markell's findings implicated twenty-two police officers, including fifteen Constables and seven Sergeants, thirteen of whom were dismissed and the remainder suspended.²¹¹ Further action however, was postponed until the Crown solicitor had had the chance of 'thorough perusal' of Markell's report.²¹²

For the leader of the opposition however, the report brought reflected a bigger issue.

Referring to the Commission's findings, Lang argued that:

²⁰⁹ *Ibid.*

²¹⁰ Ministerial Statement, Bertram Stevens, *New South Wales Parliamentary Debates*, 1 December, 1936, pp. 838-839.

²¹¹ 'SP Betting – Report by Judge, “Serious State of Things”,' *Sydney Morning Herald*, 2 December, 1936, p. 15. In his ministerial statement, the Premier, Bertram Stevens elaborated more fully on the figures. Two sergeants and eight constables had been found guilty of 'framing' and giving false evidence, one constable guilty of wrongly inducing an accused person to plead guilty, two constables guilty of giving false evidence before the Commission, and one sergeant guilty of wrongful entry of private premises. In addition to these findings, one sergeant had been 'adversely commented upon' as to wrongful entry. Apart from the police found guilty of charges, moreover, Markell had made adverse comment upon the conduct of five sergeants and four constables, in *Ibid.*

²¹² *Ibid.*: p. 838.

The question agitating the public mind is at the moment is: what steps is the government taking to find out if the malpractices adopted by the starting-price squads have been followed in any other branch of the police force; and what steps have been taken to ensure that the conditions disclosed by the Royal Commissioner will not recur in any other branch of the force.²¹³

Claiming that the public had ‘no faith in the police force,’ Lang proposed an emergency motion to ‘introduce this session emergency legislation to place the police force again under the control of the government.’²¹⁴ The source of his motion was the 1935 Police Regulation (Amendment) Act, which required the assent of both houses of parliament to dismiss the Commissioner, replacing a system where censure of the Commissioner was at the discretion of the responsible minister. Lang had difficulty linking this particular concern with the findings of the Royal Commission, particularly as many of the cases predated the amendment. Lang’s motion was not passed. The sentiment which had provoked it however, found a more topical locus in what had become known by the end of December as ‘the Miller case.’²¹⁵

On 15 December, Mr Wilson asked the Premier if:

In view of Judge Markell’s report on the honesty of Constable Miller, who was apparently disrated on false evidence, will the Premier take the necessary steps to reinstate Constable Miller to his former status?²¹⁶

Later that day, Ness voiced his concern that Inspector Fergusson, who was responsible for Miller’s being disrated, was being considered for a promotion to Superintendent. He asked

²¹³ Lang in: *NSW Parliamentary Debates*, 3 December, 1936, p. 985.

²¹⁴ *Ibid.*

²¹⁵ ‘Miller’s Position,’ *The Sydney Morning Herald*, 21 December 1936, p. 9.

²¹⁶ Wilson in: *NSW Parliamentary Debates*, December 15, p 1172.

whether that promotion would be held until the report of the Commission 'had been finally dealt with.'²¹⁷

Miller's most vocal advocate during these months was the newspapers. Amongst the nationwide coverage the Royal Commission's findings had received, however, the Sydney tabloid *The Truth*, led the charge. On 3 January, the first edition for the 1937 calendar year, the paper ran the provocative front-page headline 'is Constable Miller the victim of police terrorism?'²¹⁸ and the following week: 'Constable Miller Must be reinstated.'²¹⁹ Their advocacy was party to a broader campaign against the police, which took issue with alleged brutality, a spate of unsolved murders and lax enforcement of liquor laws.²²⁰ In Covering Miller's case, *Truth* alleged that a corruptive friendliness existed between MacKay and the premier, and treated as suspicious a silence about the Constable's fate from both the police force and the premier himself. The source of the paper's concern was not just the question of whether Miller was to be returned to plain-clothes work. MacKay actively declined to comment on the findings of the 1936 inquiry, short of stating that Miller was being investigated for departmental charges, and that he would report only upon knowing their outcome. Unsatisfied, the paper continued to push, contending that 'there is too much shuffling and delay over the Miller case,' and that 'the authorities have clamped the lid of silence and secrecy on the case of Constable Mendelssohn Bartholdy Miller.'²²¹

In early 1937 senior members of the police force responded to the controversy surrounding Constable Miller. Following a request by the Premier, Inspector Fergusson furnished a report, dated 4 January 1937. In this report, Fergusson sought to justify his findings in his investigation of the Mowlds case and answer the Royal Commission's adverse comments on

²¹⁷ Ness in: *Ibid*, p. 1173.

²¹⁸ 'Is Constable Miller the Victim of Police Terrorism,' *Truth* 3 January, 1937, p. 1.

²¹⁹ 'Constable Miller Must Be Reinstated,' *Truth!* 10 January 1937, p. 19.

²²⁰ See for example: *Truth* 27 December 1936, p. 21.

²²¹ *Truth*, 10 January 1937, p. 19.

his report. Fergusson's new report contained lengthy description of his investigation's procedure punctuated by extensive quotation of police rules. He re-iterated his distrust of Mowlds as a witness, and explained that on his own thorough investigations of Mowlds shop, he had found that the major pillar of Mowlds' argument – that an individual could not be seen on the telephone from the shop floor – was simply untrue. He had also found Miller to be 'shifty and unconvincing,' and argued that the Constable's position was indefensible.²²² Miller had broken police rules specifying that misconduct need be reported, and had either lied to protect a better, or had failed to report perjuring police officers. For Fergusson, either possibility warranted the recommendation he had made.

Interestingly, Fergusson introduced his report with a description of what he described as 'the manner in which the [...] complaint by Mowlds was brought under departmental notice.'²²³ In the paragraphs following, Fergusson stated that the 'certain organisation' referred to in his earlier report was the Freemasons. The Mowlds case, he believed, had been brought to departmental attention under conditions unduly influenced by Masonic allegiances and practices.²²⁴ His allegations stemmed from the fact that Mowlds, Constable Miller, Williams and Inspector Russell were all Masons. He stated that Miller would have been 'made aware' that Mowlds was a mason by the presence of 'certain printed matter and ritual' in Mowlds' house, and reported that Miller's allegations had been brought to him through the word of masonic individuals.²²⁵ Russell, Fergusson said, had attempted to approach the issue strictly 'on the square' – under conditions of masonic secrecy – something he had refused outright to

²²² Ibid.

²²³ SRNSW: [9/2470].

²²⁴ Ibid.

²²⁵ Ibid.

condone.²²⁶ In Fergusson's eyes, this procedure was 'highly improper,' and served to cast further doubt over Miller.²²⁷

Finally, Fergusson responded to the comments made about him during the Royal Commission. During the investigation of the Mowlds case, Mr Windeyer KC had stated that his prior report was 'either blatant stupidity or it [was] lying [*sic*] special pleading.'²²⁸ Fergusson had taken personal offence to this comment, and he concluded his report by stating:

Mr Windeyer's remarks regarding me are an open criticism and attack on the competence, honesty and integrity of a man who was absent and not represented at the Royal Commission and which by the great amount of publicity they received at the time has done me considerable harm.²²⁹

He re-enforced that his conclusions were 'strictly honest,' and had he had the opportunity of appearing before the commission, he was sure that 'such strong criticism would not have been made.'²³⁰

Attached to Fergusson's report was a cover letter authored by MacKay. In this letter, Mackay expressed that he agreed with Inspector Fergusson's findings, and that Markell had been mistaken regarding Constable Miller. He suggested that a fresh commission be issued so that the Mowlds case could be re-heard and Inspector Fergusson could be afforded the opportunity of having his evidence heard. It is unclear why MacKay took this step, indeed Evans has quipped that he must be the only police commissioner to ever actively seek one.²³¹

²²⁶ Ibid.

²²⁷ Ibid.

²²⁸ Ibid.

²²⁹ Ibid.

²³⁰ Ibid.

²³¹ Markell, *Report 1937*, p. i.

Perhaps he had confidence in Fergusson's evidence, or else in his ability to cast doubt on Markell's previous finding.

The proposed commission was issued in January 1937, and began hearings on 3 March. It was to investigate 'certain matters' arising from the 1936 Commission's report. The commission's terms of reference were narrower than its predecessor and were condensed to just three clauses. The government again appointed Markell as Commissioner, perhaps fearing that selecting someone else would open the government up to criticism that it was trying to whitewash previous finding. If Fergusson and the police force were to be restored to public confidence, it was important that Markell be the one to so find.

In the first place, the commission was to 'hear and examine' the evidence of Inspector Fergusson regarding his inquiry into the Mowlds case.²³² In the second place, the commission was to hear new evidence from any person with respect to the case of William George Mowlds. Finally, the Commission was charged with investigating whether:

In view of his conduct in relation to the said case of William George Mowlds and to any other matter whatsoever – Constable Miller [...] has been dealt with unfairly or unjustly in his position as a member of the Police Force and what (if any) action should be taken with respect to him as regards his position as such a member.²³³

As previously, Markell was painstaking, setting a high standard of evidence and refraining from drawing broader conclusions.

Inspector Fergusson appeared before the commission on the third and fourth days of its hearings. Rather than being allowed to present himself on favourable terms, however,

²³² Ibid: p. ii.

²³³ Ibid.

Fergusson was thoroughly cross-examined by Messrs Shand and Windeyer, who appeared in aid respectively of Constable Miller and the Commission. In their line of questioning, they challenged Fergusson to justify the importance he'd given to his concerns about 'improper' Masonic influence over the discrepancies in Gallivan, Perrett and Nelson's evidence. His contention that the police rules regarding internal investigations represented the 'exact procedure' he had adopted was contrasted with the access he had given the offending officers to their previous statements and the considerable time delays between interviews.²³⁴

Fergusson was clearly uncomfortable with this unanticipated scrutiny. He defended his findings, but was often unsure of himself, and answered questions indirectly, seeking to explain and qualify when pushed for "yes" or "no" answers.

Over two days of intense examination Fergusson's conviction was broken. On the morning of day five, Fergusson presented himself at the commission with a changed tune. 'At the conclusion of yesterday's proceedings,' he told the inquiry, and:

Following an analysis of certain discrepancies of evidence, and also having regard to other matters put forward by counsel, I left the court in grave doubt as to the stableness of the opinion that I had firmly held up till then. I went to the chambers of my barrister, and told him that I had grave doubt upon the matter. Last night and until the early hours of this morning, I gave very full and careful consideration to the whole of those matters. [...] After very lengthy and careful consideration I have formed the conclusion that I am wrong in my opinion in regard to these matters.²³⁵

²³⁴ 'Evidence of the Royal Commission of Inquiry (his Honour Judge Markell) into Certain Matters Arising from the Report of the Royal Commission on Police and Illicit Betting – 1936,' (Sydney, David Harold Paisley: Government Printer, 1937), pp.43-90.

²³⁵ Ibid: p. 57.

Windeyer suggested that Fergusson was 'laying special pleading.'²³⁶ Fergusson denied that this was the case and Markell accepted this. He stated in his report that:

I accept the Inspector's explanation that he was mistaken with regard to his findings contained in his original report of the 12th January, 1943. There is nothing on which a charge of dishonesty could be sustained against him.²³⁷

It seems unlikely that Fergusson had been genuinely dishonest in his report. Pending promotion notwithstanding, it is hard to imagine anyone subjecting themselves to such scrutiny unless they believed they were right. Maurice Punch has argued that internal police investigations often fail to reveal deviance or malpractice. Amongst the reasons why this can be the case are solidarity between officers and the adoption of a 'case-by-case, reactive' style of investigation.²³⁸ During Fergusson's investigation, Gallivan, Nelson and Perrett did undoubtedly display solidarity. Certainly none of the three concerned officers confessed to having framed Mowlds and falsifying evidence against him. Fergusson's investigation had been reactive, comprised as it was solely of witness statements and the visit to Mowlds' shop. Fergusson's investigation however, was also shaped by deeper-rooted biases and frameworks than this. As Fergusson himself noted his report was based on a number of assumptions, most notably, that Mowlds was guilty. Around these two opinions he explained, he had organised the evidence and its discrepancies to form his interpretation. His judgements however, suggest a further assumption that he had not acknowledged. Fergusson had put himself at pains to demonstrate in his second report that he was well acquainted with the rules of departmental investigations, and had conducted many of them himself. Yet his investigative method had privileged Gallivan, Nelson and Perrett in a way which gave the

²³⁶ Windeyer in: *Ibid*: pp. 57-9.

²³⁷ Markell, *Report 1937*, p. 7.

²³⁸ Maurice Punch, *Conduct Unbecoming*, pp. 90-1.

officers the material to deflect the very allegations levelled against them. In his investigative method Fergusson had given an advantage to Gallivan, Nelson and Perrett in a way which suggests he had presupposed their innocence.

Fergusson's implicit trust in his officers is not an isolated phenomenon. Robert Reiner has argued that the police typically adopt an "us" and "them" outlook, which is coupled with heightened suspicion about members of the public.²³⁹ This generalised attitude perhaps accounts to some extent for Fergusson's willingness to trust Gallivan, Nelson and Perrett. Mowlds possession of betting slips clearly linked him with betting in some way, and in denying his guilt upon arrest he had acted exactly how a bettor was expected to act. Further than this, Reiner has argued that within the police force, there is often a 'gulf' between 'street-wise' operational officers and 'management' level police, who are required to 'project an acceptable, legalistic, rational face to the public.'²⁴⁰ This gulf, he argues, has a functionality regarding deviance because 'it allows presentational strategies to be adopted by management levels in real ignorance of what these might cover up.'²⁴¹ However real Fergusson's ignorance was, he was certainly not disposed to entertain with any seriousness the possibility that Gallivan, Nelson and Perrett had indeed done what was alleged.

This same logic as it seems, extended to Miller. In his report, Fergusson had castigated him for not making his complaint through the official channels, mentioning that Miller had broken the rules in taking his complaint to Mr Williams. During the internal inquiry, when asked why he hadn't reported the officers, Miller had explained that 'one does not like to have to do that, as you have to work with them.'²⁴² It is unclear why Miller had chosen to act in this particular way. The Royal Commission had found Sergeant Gallivan guilty of several

²³⁹ Robert Reiner, *The Politics of the Police*, pp. 115-126.

²⁴⁰ Ibid: p. 117.

²⁴¹ Ibid: p. 125.

²⁴² Miller, quoted in: *Report 1936*, p. 90.

infractions, which suggests that Sergeant Gallivan regularly broke the rules. In approaching Mr Williams, Miller may well have been motivated by their mutual membership of the masons. It is more significant however, that having decided to act, Miller chose an informal avenue to do so, and sought the cover of secrecy. Fergusson's readiness to target Miller for a breach of process before considering the content of his claim suggests an ignorance of, and as such tacit complicity in a police culture which made complaining about fellow officers incredibly difficult.

Critically, Shand and Windeyer had demonstrated that whether his actions were wilful or not, Fergusson's trust in Gallivan, Nelson and Perrett had made him complicit in the type of malpractice the 1936 Royal Commission had revealed. On the basis of his assumptions about Mowlds, Miller and the other three officers, Fergusson had not only failed to discipline deviant officers, he had actively endorsed their actions, all the while contributing to the vilification of a Constable who had done the right thing. And he had supported the conviction of an innocent man. What was perhaps most alarming however, was that Fergusson's report had been so strongly endorsed not only by its author, but by the Commissioner himself.

'The Victim of a "Stunt":' The Hill Inquiry and Miller's trip to Nyngan

Fergusson's commission appearance was decisive, but proved to be just the beginning. Although the commission found little new in its re-investigation of Mowlds' case, when it turned to 'the Miller case' its findings suggested a deeper culture of police practices framing people for arrests they could not evidence. Although the terms of reference had suggested that the Mowlds case would drive this line of inquiry, the commission revealed that there had been seven complaints forming the basis of Miller's investigation between late December and

early February, all of which had surfaced during or after the 1936 Royal Commission. In typical style, Markell's focus was on individual complaints, and he set out that he viewed his 'function' as being 'to inquire whether he (Miller) has been unfairly or unjustly treated in the course of any of the investigations.'²⁴³ While in 1936 this approach had given Markell some purchase on the evidence, in investigating Miller's case it proved totally inadequate.

Six of the complaints against Miller came from a collection of aggrieved bettors and the seventh was an unsubstantiated allegation that Miller had sold a stolen car for a man named Mack. In all but one of these cases, Markell found that the charges against Miller were 'baseless,' but had been investigated fairly.²⁴⁴ What Markell's analysis didn't question, was the justification for these investigations. Evans has objected to Markell's findings in this respect, arguing that he seemed 'oblivious to the possibility that a rapid series of official investigations, no matter how fair, can be a form of harassment.'²⁴⁵ More than this, in his capacity as Commissioner, it did not strike Markell as prudent to explore the possibility that the police department may have been seeking to discredit Miller. Markell gave no consideration to the origins of the complaints, save for observing that three of them had been made by individuals known to Sergeant Gallivan, who had every reason to target Miller. Nor did he speculate about any sinister motivations that the upper echelons of the police force may have had for investigating Miller, actively engaged as they had been during January in challenging Markell's findings.

The evidence collected regarding the investigation of one particular complaint however, suggested that all of these things were features of the departmental investigation. In September 1936, Christopher Norman Hill contacted the police and stated that in 1933 he had paid Miller for Immunity from arrest, and Sergeant Lavelle was detailed to investigate.

²⁴³ Markell in: *Report 1937*, p. 11.

²⁴⁴ Markell in: *Ibid*, pp. 11-23.

²⁴⁵ Evans, *MacKay*, p. 239.

During this investigation, Hill's story was changed, and he stated instead that he had "lent" £1 to Constable Miller in April 1933 following his conviction, but denied that it was to secure immunity from arrest.²⁴⁶ As a result of his investigations, Lavelle reported that as Hill's evidence could not be corroborated, the matter could be taken no further. On the morning of 15 December however, Hill again contacted the police. This time, he stated that Miller had visited him at his house the previous evening, and would be coming back that evening. On the 16th, Hill again contacted the police station and stated that Miller had visited the night before, and had given him a £1 note.²⁴⁷

Before the commission, Miller confirmed that he had visited Hill, and had done so following an anonymous phone call on December 12. During this phone call, Miller said:

They told me that the police department were investigating Logan's case again, and they were endeavouring to put me down the "chute," or some words to that effect, and if I came out, Jack Schaffer would be down Monday night, and I would be able to get a statement.²⁴⁸

The case to which Miller referred in his statement was not described, but Thomas Logan was identified as an acquaintance of Hill's who later corroborated Hill's allegations in a suspicious manner.²⁴⁹ Miller was unable to identify the caller. He stated that he had initially thought it was Hill, but before the commission was positive that it had not been. He had gone to collect the statement nonetheless.

²⁴⁶ Markell, *Report 1937*, pp. 11-17.

²⁴⁷ *Ibid.*

²⁴⁸ *Ibid.*: p. 14.

²⁴⁹ *Report 1937*, pp. 13-14. After having a conversation with Hill on 20 December, Logan visited police headquarters on 23 December, and stated that he had once lent Hill £1 to lend to Constable Miller, while he was operating a wine saloon. The wine saloon was not in business in September 1933 however, and Hill called into headquarters a few days later to change the date in his statement.

Miller's evidence does not preclude the possibility that he was being set up. It was revealed during this case that both Hill and Logan were acquainted with Gallivan, and Miller himself had suspected a set up.²⁵⁰ He told the commission that the morning after first visiting Hill on the night of 14 December, he had seen his name on a noticeboard at Newtown police station, instructing him to attend headquarters, and he became suspicious that a 'trap' was being set.²⁵¹ Notwithstanding this, and against the advice of a Constable O'Dea, Miller made his second visit to Hill's house that night.

As a result of the Hill complaint, Miller was called before Inspector Walsh and Sergeant Sherringham at police headquarters on 17 December. In this interview Miller gave evidence contrary to that he would later give before the commission. He stated that he'd met Hill at Newtown Bridge between four and ten days prior to visiting his house and it was not until later in the interview that he referred to an anonymous phone call. Miller stated that he had told another officer about the anonymous phone call. Initially, when asked about his identity, Miller had been reluctant, saying that he did not want to bring him into it. It was not until being interviewed again the following day that he reluctantly gave up O'Dea's name, claiming that O'Dea had said to Miller 'don't drag me into this for god's sake.' When questioned further, Miller remained unwilling, stating 'please don't ask me, I have given my word of honour not to have him dragged into it, he is a very sick man,' which suggests that Miller felt he was protecting him. When Constable O'Dea was questioned, he denied that he had asked Constable Miller not to mention his name. As a result of O'Dea's evidence, Inspector Walsh recommended Miller for a departmental charge of making dishonest

²⁵⁰ Ibid: pp. 14-15.

²⁵¹ Ibid: p. 14.

statements.²⁵² On evaluating this charge, Markell argued that it could not be ‘sustained,’ but that it was impossible to ascertain which version was ‘correct.’²⁵³

Recent policing literature has dealt extensively with “whistleblowing”, where an individual reports corruption or misconduct from within an organisation. It is an act which is often accompanied by organisational resistance towards the reporter. Punch for example has argued that ‘when policemen set out to hunt other policemen this provokes tensions of a quite different order to, say, an external control agency’ taking up investigations, with ‘bitterness, banishment, hostility and hatred’ all possibly ensuing.²⁵⁴ Evans too argues that an ‘ethos of group loyalty at all costs,’ and the maintenance of a ‘code of silence’ surrounding discretions and malpractices, especially when they are widespread behaviours often re-enforces antagonism towards whistle blowers.²⁵⁵ Presuming Constable Miller’s statements are honest, O’Dea’s behaviour demonstrates this kind of antagonism in action. Although O’Dea had offered his advice, given the role Miller had played in having three police officers sacked – all likely known to O’Dea, stationed as he was at a neighbouring division – it is more than likely that there was also some antagonism that he felt towards him, or at the very least a desire to distance himself. When investigated formally however, O’Dea made an about turn. Unsurprisingly, his evidence was believed, saving his own credibility, reducing Miller’s in the process.

Miller was instructed to appear again at headquarters on 21 December. Constable Miller failed to do so, arriving instead at Newtown Police station after 1 pm. He was directed to headquarters where he arrived at 2 pm. There he explained that his absence was due to a quarrel with his wife over an article she had interviewed for in *Truth!* She had left him, he

²⁵² Ibid: p. 15.

²⁵³ Ibid: p. 15.

²⁵⁴ Punch, *Conduct Unbecoming*, p. 90.

²⁵⁵ Evans, *MacKay*, pp. 233-5.

stated, and he had been upset. At 3pm Miller was asked to sign his statement on the Hill inquiry, and refused. As a result, he was paraded before the MacKay, who, Markell reported, ‘spoke to him as to his position, and pointed out that it was his duty to obey the regulations.’²⁵⁶ The Constable signed his statement and left around 5:45 that evening.²⁵⁷

Although Walsh, Sherringham and their short hand writer present claimed the interview followed the ‘normal’ procedure, before the commission, Miller claimed otherwise.²⁵⁸ He reported that he had been accused of “‘putting it over,’” threatened with his job, and had the police rulebook slammed in front of him several times.²⁵⁹ He told the commission:

When Inspector Walsh was questioning me, he would say to the shorthand-writer, “Do not put this down,” and then the shorthand-writer would stop writing, and Inspector Walsh would question me to a considerable extent. After he obtained perhaps his view of the matter, he would say to the short hand writer: “put this down.” Then perhaps when I refused to give a Constable’s name, but with no intent to disagree with instructions, he would pick up the Rules Book and slap it down several times. I was threatened with dismissal, and that I would be taken before the Superintendent and the Commissioner and charged with neglect or with disobeying the reasonable demands of a commissioned officer.²⁶⁰

Miller stated that he had been treated ‘like a gaol-bird,’ that ‘when I wanted to go to the lavatory or get a drink of water Sergeant Sherringham would escort me.’²⁶¹ Miller said that he had been highly agitated, and at one stage had become ‘a little excited,’ to the point where

²⁵⁶ *Report 1937*: p. 24.

²⁵⁷ *Ibid.*

²⁵⁸ *Ibid.*: p. 27.

²⁵⁹ *Ibid.*: p. 25.

²⁶⁰ *Ibid.*

²⁶¹ *Ibid.*

he had tried to escape the room. Sergeant Sherringham had again accused him of “putting it over,” and Miller had ‘jumped up and went for Sergeant Sherringham. Inspector Walsh tried to calm us down, and I made a bolt to get out through the door.’²⁶² Sergeant Sherringham and Inspector Walsh reluctantly described Miller as ‘excited’, but denied the bulk of his allegations.²⁶³

For Markell, Miller’s evidence was unable to be verified, and he was reluctant to push the issue further. Miller however, had few motivations to invent such a story, and Sherringham and Walsh had every reason to cover it up. The events which followed would however, tend to confirm Miller’s evidence. Before departing headquarters that day, Miller was instructed to parade for duty on the morning of 23 December at Newtown police station, but did not appear as instructed. Rather, at 5pm the Newtown police station received a phone call from the Nyngan police in Northern NSW. Miller, they were told, had arrived earlier that afternoon and identified himself to them. The commissioner of police was notified and in turn contacted Sergeant Sheridan of the Nyngan police. MacKay instructed him to monitor Miller’s wellbeing closely, and accompany him back to Sydney on the following day’s train.²⁶⁴

The two men arrived in Sydney on the morning of the 25 December. Upon arrival, Miller was escorted to see the police surgeon, Dr Percy, and then to MacKay. Following this, Miller was relieved of duty until 2 January, when he resumed light duties at the North Sydney Police Garage.²⁶⁵ MacKay did not explain why he had expressed concern at Miller’s state of being, or ordered a doctor to examine him upon his return to Sydney. Having seen Miller just prior to his departure however, MacKay’s actions suggest that he had felt that there might be

²⁶² Ibid.

²⁶³ Ibid: p.26.

²⁶⁴ Ibid.

²⁶⁵ Ibid: pp. 24-25.

reason for such a course. Perhaps he felt that he Walsh and Sherringham had overstepped the mark during their departmental inquiries, or perhaps he saw in the incident an opportunity to discredit Miller further by casting him as mentally unstable.

Statements collected on the incident were able to piece together much of Miller's trip. It was found that following his interview with MacKay on the 21st, Miller had cashed a cheque and bought a ticket to Dubbo, but had been found at 12:15pm the following day asleep at Nyngan, the end of the train line. Miller was unaccounted for until about 7pm that evening when he was found by a Mr and Mrs Ward on their property "Green Camp," located nine miles out of Nyngan. The couple took Miller in for the night, giving him a meal and accommodation in the shearer's huts on their property. Ward recounted that when he arrived, Miller was 'quite unable to recollect his identity and where he had come from.'²⁶⁶ After breakfast, Miller and Ward had a conversation during which Miller was able to recollect his name and that he was a police officer. After lunch, Miller produced a piece of the *Sydney Morning Herald*. The paper had an article relating to his participation in the 1936 Commission in which some sandwiches had been wrapped, and he explained to the Wards that his memory had been restored. He voluntarily returned to the Nyngan police station and soon after to Sydney.²⁶⁷

The reasons for Constable Miller's unexpected visit to Nyngan were the source of considerable contention both for the police administration and before the commission. Dr Percy examined the Constable several times during January and reported in February that:

When I examined Constable Miller on the 25th December, 1936, he was depressed and emotionally unstable, occasionally breaking down. His speech was hesitant but his conversation rational and he had no confusion regarding his present position. Apart from a lapse in memory from Monday

²⁶⁶ Ibid: p. 23.

²⁶⁷ Ibid.

night until he found himself some miles out of Nyngan, his memory appeared to be normal. His condition was such that I cannot exclude the possibility of his having had a lapse.²⁶⁸

A series of departmental investigations conducted by Walsh and Sherringham, however, set out that Miller's loss of memory was a "sham."²⁶⁹ More than this, MacKay stated before the Commission that he thought that *Truth* had 'concocted' Miller's absence in a 'campaign to make newspaper profits.'²⁷⁰ He did not believe that Miller was himself responsible, but had been the 'victim of a "stunt".'²⁷¹

The episode did not end here. Markell's analysis of the police inquiry which had labelled Miller's trip a "sham," found that Walsh and Sherringham had conducted their investigations with demonstrable bias, and had wilfully misrepresented evidence, to depict Miller as 'boastful,' and a 'liar.'²⁷² Even MacKay begun to show strain as this evidence was being given, and was reduced to angry outbursts during the hearings. Evans has discovered an exchange between MacKay and Shand that was omitted from the official transcript.²⁷³ Shand had 'rebuked Walsh for looking at Mr MacKay instead of at him when he was asking questions' and had provocatively asked Walsh whether Sherringham was 'the prime bully of the force.' MacKay, who was present at the hearing, had interjected. 'I resent that very much,' he complained, 'why don't you do that somewhere else?' Shand replied that MacKay had been selective in his production of documents for the commission, and MacKay said that he was not going to allow 'such vicious attacks to be made on him.' In spite of this evidence and MacKay's behaviour however, Markell was not prepared to find that the officers had

²⁶⁸ Ibid.

²⁶⁹ Ibid: p. 28.

²⁷⁰ *Evidence 1937*, p. 597.

²⁷¹ Ibid: Page 597.

²⁷² *Report 1937*, pp. 31-32.

²⁷³ Evans: *MacKay*, pg. 241.

been ‘consciously unfair to Constable Miller.’²⁷⁴ Rather, he stated that the two men should perhaps not have been detailed with this investigation given their involvement in the Hill case, and that he regretted Dr Percy had not reported on Miller’s mental state earlier.²⁷⁵

While this was happening, an interesting item was tendered in evidence by Miller’s counsel, Mr Shand. The item was a list entitled “Charges against the Commissioner of the Police,” and enumerated ten ways that it claimed MacKay had personally mistreated Miller.²⁷⁶ The list included the attempt to ‘discredit’ Miller in order to protect Fergusson, that he had ‘improperly prejudiced the case of Constable Miller’s absence,’ that he had deliberately construed Miller’s illness as a “stunt,” and that the departmental inquiry of December-January had been conducted with the deliberate intent of re-opening ‘baseless’ charges so as to discredit Miller.²⁷⁷ Markell examined the charges in his typical style, and ambiguously worded as they were, they remained unproven. The list’s author remained anonymous. Questioned in the commission, MacKay stated that he did not believe that Miller ‘had anything to do with the drawing-up of the ten charges against me.’²⁷⁸ Evans has speculated that the charges’ author was in fact Ezra Norton, the owner of the *Truth!* newspaper.²⁷⁹

Truth had been active during the Royal Commission, and had even gone so far as to pay for Miller’s engagement of Shand as his counsel.²⁸⁰ Perhaps more importantly, within their editorial space, *Truth* took on an important role during the proceedings. While Markell’s limited terms of reference, the burden of proof and the political pressures surrounding the case often left his hands tied, *Truth* faced none of the same problems. Their duty was to their readership and their profit-margin, and as such they were free to suggest their own

²⁷⁴ *Report 1937*, p. 32.

²⁷⁵ *Ibid.*

²⁷⁶ *Ibid.*: pp. 31-7.

²⁷⁷ *Ibid.*

²⁷⁸ *Evidence 1937*, p. 597.

²⁷⁹ Evans, *MacKay*, p. 242.

²⁸⁰ *Report 1937*, p. 2.

interpretations of what was going on, indeed in this case they stood to benefit by doing so. In this way, *Truth* and the newspaper press generally was uniquely placed to break in an informal way the barrier between what was suspected and what could be evidenced or proven, and it was a role they filled with enthusiasm.

In his final report, Markell made minor findings. He stated that in general Miller had not been treated ‘unfairly,’ but with a ‘desire, if possible, to prove that he was untruthful and unreliable.’²⁸¹ For Markell, Miller was an ambiguous figure. He took seriously the allegation that Miller had been mistreated. Yet without situating it in the broader context of the police administration and hence considering the possibility of a police campaign to discredit Miller, Markell was not only unable to explore police culpability he was unable to comprehend why Miller had acted the way he did. Although praising of Miller’s altruism, he was also concerned that Miller had been overly equivocal, and at times contradictory.²⁸² Markell struggled to explain why Miller had visited Hill at all, why he had presented two sets of evidence about how Hill had contacted him, and his reluctance to identify Constable O’Dea. While during the 1936 Commission, Markell’s approach had given him some purchase on the allegations before him, in 1937 his inability and unwillingness to link the specific to the general left him blind to and in effect complicit in the police culture he was investigating.

²⁸¹ Markell in: *Ibid*, p. 38.

²⁸² *Ibid*: p. 14.

Conclusion

Following the Royal Commissions, the Stevens government launched a campaign against SP betting.²⁸³ The police embraced the new mood with fervour. On 13 May 1938, Judge Markell presented Keefe, then head of the Metropolitan Anti-Vice squad with court orders declaring three city hotels ‘common gaming houses.’²⁸⁴ Under the *Gaming and Betting Act (1912)*, on the affidavit of a police Superintendent, Inspector or sub-Inspector any premises could be declared a ‘common gaming house.’²⁸⁵ If a magistrate made this declaration, the police were authorised to enter that premises without a warrant, ‘break open any doors, windows and partitions,’ and once inside ‘seize any instruments of gaming and any instruments of betting and documents relating to betting, and any money and securities for money’ they found there.²⁸⁶ Such a declaration also placed the onus of proof on any person found on the premises to prove they were there for legal purposes. In its reporting of these declarations, the *Sydney Morning Herald* pointed out that although this provision had been within police powers since 1906, it had never before been exercised.²⁸⁷ Nor did it seem like

²⁸³ On 13 May, the *Sydney Morning Herald* referred twice to the ‘government’s plans’ to ‘put a check on starting-price betting;’ McCoy has also argued that ‘the government launched its anti-SP campaign on 13 May, 1938,’ in: *Sport*, p. 42.

²⁸⁴ ‘Sudden SP Move,’ *The Sydney Morning Herald*, 13 March, 1938, p. 13.

²⁸⁵ *The Gaming and Betting Act (NSW)*, 1912.

²⁸⁶ *Ibid.*

²⁸⁷ ‘Sudden SP Move,’ p. 13.

it would be a once-only event. Indeed, the three declarations of 13 May were accompanied by a public warning from Keefe: ‘There will be others,’ the *Herald* quoted him saying.²⁸⁸ Shortly after, the Stevens government amended the Gaming and Betting Act. In October 1938, the broadcast or publishing of any race results and the telephoning of odds information from racecourses was banned.²⁸⁹

The bettors, for their part, simply adapted. McCoy has written that ‘the day after the law went into effect in October, “tic-tac” signallers appeared at Randwick communicating on-course bookmakers’ odds to a telescope observer outside the course.’²⁹⁰ No longer welcome in hotels, bettors simply started plying their trade over the telephone.²⁹¹

Constable Miller served out his career in the NSW police force, although Evans has noted that it ‘was less than meteoric.’²⁹² Promoted to Constable first-class in 1940 and Senior Constable in 1947 Miller remained at this rank until he retired in 1963. Evans has also noted that on discharge his endorsement was “very good,” which he states ‘is only lukewarm in the lexicon of police service cards.’²⁹³

The inquiry had revealed that SP was rife and that suppression efforts weren’t getting rid of it, yet tougher laws had been the response. The inquiries had also revealed police malpractice and abuse of powers in betting suppression, but were nonetheless used as a means of justifying increased police involvement in SP bookmaking, as the police were given a mandate to crack down on it. Finally, the inquiry had demonstrated that the police were antithetical to those seeking to keep them accountable, yet were left to oversee Miller’s future career.

²⁸⁸ Ibid.

²⁸⁹ *The Gaming and Betting (Amendment) Act (NSW)*, 1938.

²⁹⁰ McCoy, ‘Sport as Modern Mythology,’ p. 42.

²⁹¹ Ibid: p. 41.

²⁹² Evans, *Mackay*, p. 250.

²⁹³ Ibid.

There is a certain irony in this course of action, bound up in the way the allegations had been interpreted. Lacking a vocabulary of ‘corruption,’ the result of the commissions had been to blame the individuals responsible for misdemeanours it revealed. Once these aberrant officers had been dismissed, the government’s reforms implied, the police could proceed unhindered and empowered with the task of policing the bettors. Without the vocabulary of corruption that is to say, they failed to see how badly they had misdiagnosed the problem.

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