

DEALING WITH DEMONSTRATIONS

The Law of Public Protest and its Enforcement

Roger Douglas; Federation Press, 2004; 159 pp; \$49.50 hardcover.

Describing the law of public protest is no straightforward task. As Roger Douglas points out, '[a]n analysis which referred to every possible demonstration offence would constitute a veritable summary of much of the criminal law of Australia' (70). This book capably categorises and describes relevant aspects of international law, constitutional law and torts as well as public order offences and procedures applying to public demonstrations. It provides invaluable references to applicable statutes, and Douglas' approach to common law principles is thoroughgoing and historical. His broad conception of the laws potentially applying to protest is one of the strengths of this work.

Dealing with Demonstrations also considers arguments for and against demonstrations and assesses some of the claims made in these debates against available evidence. This is an original approach, and given the diversity and ephemeral nature of protest it is also a challenging one. Douglas' principal evidence is drawn from newspapers. He notes their limitations, in particular the tendency to under-report numbers of protesters and over-represent violence. However, at some points of his analysis, this subtlety slips away. One example is his discussion of AIDEX 1991, based entirely on the *Cariberra Times* account of the protest as 'violent' and requiring 'a police crackdown'. Many alternative accounts exist, including an inquiry by the Office of the Commonwealth Ombudsman which found police used excessive force.

Another serious limitation on this otherwise interesting and extensive data is that Douglas provides little information about the last 15 years, barely considering whether demonstrations or legal responses to them may have changed in that period. His consideration of numbers and violence depends upon the *Australian* 1965–1975 and the *Age* 1960–1990. His analysis of charges against demonstrators is drawn

from Victorian newspapers 1930–1959 and Victorian court reports 1960–1990. Thus his data is primarily historical and (more recently) primarily Victorian. This historical focus is a real strength: *Dealing with Demonstrations* provides valuable information about protest during the Great Depression and the Vietnam War. However, drawing conclusions from this data as though they are straightforwardly applicable now seems less defensible. This data has little to say about Critical Mass, Reclaim the Streets or demonstrations that do not depend on large numbers or media coverage for their effectiveness.

In contextualising the law, Douglas also assesses which offences have fallen into disuse and which are seldom used. He gives thoughtful attention to some situations in which specific legal strategies (such as bonds) have predictable outcomes on demonstrator conduct. In addition to considering police powers, Douglas is to be applauded for including police violence as a strategy for imposing 'public order'. However, elsewhere he fails to acknowledge the potential chilling effects of police conduct. In practice, police can limit demonstrator conduct through actual violence, threats of arrest or violence and assertively communicated accounts of their legal powers (whether accurate or inaccurate). They can also physically control demonstrations through the use of barriers, horses and dogs. In this context it can be difficult for demonstrators to assert, let alone achieve legal rights.

It can also be difficult to be heartened by the possibility of a favourable judgment many months hence. This may explain the lack of appellate level case law on some of the issues Douglas discusses. He suggests, instead, that it shows a lack of grounds for concern. For example: 'While the law seems to allow police to limit the right to demonstrate if there is a real danger ... [of] hostile reaction, the fact that there is only one Australian case which squarely raises the issue suggests that the problem is a largely illusory one' (137). He helpfully suggests that because protest has little impact '[d]emonstrators might sometimes do better spending an extra half an hour trying to bring their more neanderthal

friends round to their way of thinking' (9). Given this invocation of utility, I wonder it has not occurred to him that spending substantial time and money trying to achieve a positive court finding about a past event is not necessarily the best way of advancing a campaign.

Finally, there are some surprising omissions. Douglas gives no consideration to police complaints processes or avenues for civil redress for protesters who believe their legal rights have been violated. Nor does he provide references to sources that provide greater context and more accessible legal information, such as the *Activists' Guides* and online equivalents, like <<http://www.activistrights.org.au/>>.

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SEVEN TYPES OF AMBIGUITY

Elliot Perlman, Picador 2003; 607 pp; \$35.00 softcover.

Have you ever thought of leaving your day job as a lawyer, academic or bus-driver and becoming a famous novelist who is celebrated in Paris and New York? Most of us have little chance of fulfilling this dream because of our own lack of talent and dedication; however Elliot Perlman is the exception to the rule and is deservedly living out this fantasy. Perlman, a former Melbourne barrister, has written a novel that announces him as much more than a pretender.

Seven Types of Ambiguity is a brilliant story about love, prostitution, and economic rationalism. Like Perlman's collection of short-stories *Reasons I Won't be Coming*, this novel has an emotional intensity that is often dark and despairing, but that recognises the importance of authenticity and beauty in a world of conformity and corporatisation. The story is about Simon Heywood, an unemployed teacher who is unable to get over being abruptly dumped by his university girlfriend some nine years previously. Simon is a depressive alcoholic who takes English literature too literally; he is a romantic in a rationalist age, and his only friends are a young prostitute and his over-involved psychiatrist. His ex-girlfriend