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 *Canberra 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

is married to Joe, an artless stockbroker. The comparison between these two men could easily have been clichéd and overdone. However, at his best Perlman adds ambiguity to the story making us sympathise with, and dislike, both Simon and Joe.

Seven Types of Ambiguity is driven by an urgent and desperate narrative remarkably maintained via seven different voices. The book inventively consists of a central story told in seven parts by seven different characters, all in the first person. The most authentic voices were the male characters, with Perlman not always as convincing with his female story-tellers. Apart from the first part of the novel, which is engagingly told by the psychiatrist, the best sections tell the sorry story of two highflying stockbrokers, who lose both their riches and their families while pursuing the 'big deal'.

As with his first novel, *Three Dollars*, Perlman explores the impact of the political economy on personal lives, how children are cared for, and the deterioration of relationships. *Seven Types of Ambiguity*, however, is a much deeper and more sustained meditation on these subjects and, quite simply, a much better piece of fiction than *Three Dollars*. In the final sections of *Three Dollars* the characters seemed suddenly incidental to Perlman's critique of the human consequences of public sector retrenchments and the urban impact of economic rationalism. His latest book is just as politically concerned but the characters sustain their place in the narrative.

Seven Types of Ambiguity is an important Australian novel that deserves a wide readership. It is a fine piece of art and an appeal to the romantic life of passion and integrity. The character that embodies this siren call to beauty in the novel is at times so self-indulgent and obsessive that, in comparison, a life of compromises and submission to circumstances seems sensibly grown-up and even noble. Ultimately, however, the book indulges the sweaty-palmed teenager in all of us.

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REGULATING LAW

C. Parker, C Scott, N Lacey and J Braithwaite (eds); Oxford University Press, 2004; 289 pp; $185.00 hardcover.

The concept of 'regulation' means different things to different people. The burgeoning field of scholarship known as 'regulatory studies' or 'regulatory theory' is no exception. It has its origins in the so-called 'Chicago School's' attack on the US model of legal regulation and control of industry. But regulatory studies has come to embrace a number of different perspectives on the role of the state and other organisations and institutions in shaping the social and economic activity in the period following the collapse of the post-war consensus in the early 1970s. It can now be said to be 'concerned with how various forms of regulation, including law, govern social interaction'.

The topic of 'regulation' is a timely one, especially for a labour lawyer. At the same time as the Howard government complains of over-regulation of workplaces and talks about 'deregulation' of labour markets, its solution is to come up with a legally prescriptive re-regulatory agenda. Of course, this re-regulation is conducted for a particular purpose, namely exclusion of trade unions and specialist tribunals from the role of social protection in favour of market regulation.

Enter regulatory theory, which has the potential to provide a critical and intellectually rigorous perspective on regulation, a necessity in the deconstruction of the rhetoric of 'deregulation'. *Regulating Law* is a collection of essays which endeavours to re-examine some of the main subject areas in law from a regulatory perspective, or as the editors describe it, 'through a regulatory lens'. Accordingly, contract law, financial regulation, corporate governance, families, work, torts, criminal law, property, competition, administrative law, constitutional law, and international law are all subjected to regulatory analysis. The contributors were asked to consider 'what it means to see law as a form of regulation and as something that is regulated by other forms of regulation', for example, economic instruments such as financial subsidies. Questions are asked about the *effectiveness* of law as regulation, about how *responsive* law is to other forms of regulation, and about the *coherence* of law when viewed through a regulatory lens.

Some chapters engage critically with the value of regulatory theory to legal scholarship, such as Jane Stapleton on 'Regulating Torts', and Peter Cane on 'Administrative Law as Regulation'. Other chapter authors accept that regulatory studies provides a new and potentially useful form of analysis, and use questions or approaches derived from it to explore their subjects from a new angle. I have to admit I enjoyed the latter approach more than the former. For example, in their chapter 'Regulating Work', Richard Johnstone and Richard Mitchell take the opportunity to examine the historical evolution of labour regulation. Their conclusions demonstrate that to suggest that work can somehow be 'deregulated' is misleading. They find that regulation of the labour market by the courts and the state has existed for centuries. Therefore, to suggest that 'private' regulation of work through contract has been 'invaded or overturned by a twentieth century "regulatory" state is to misrepresent the historical position'.

Regulating Law will most likely be of interest to those interested in socio-legal scholarship and in the role that law might play in advancing progressive causes. Some might question whether regulatory studies add anything to existing socio-legal studies. The conclusion to the book claims that the difference between regulation and 'law in context' approaches is that with regulatory studies, it is regulation, rather than law, which is the focus. In a world where the complexity and diversity of regulation appears to be increasing, the conclusion states, both legal theory and regulatory theory are bound to assume greater importance. I am inclined to agree. At the very least, as chapter author Nicola Lacey suggests in the context of criminal law, a regulatory perspective may prompt lawyers to look again at many of the legal arrangements that we take for granted, and to 'interrogate' their various kinds of social significance.

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