

INTRODUCTION

On 2 June 2017, the Castan Centre for Human Rights Law convened a colloquium on the law of protest at Monash University's Law Chambers in Melbourne, under the leadership of Dr Maria O'Sullivan, Dr Azadeh Dastyari, and Dr Douglas Guilfoyle. This special edition captures the papers from that day.

Protest is a political act, designed to convey a message against some prevailing situation, to try to change it. Most protests are about government policies, though there are exceptions. There is the phenomenon of counter-protests, where one group of protesters protests against another, as for example happens with anti-fascists organising against white supremacist groups. Both groups in such a situation may, however, be protesting the status quo. For example, the white supremacists may be protesting existing immigration laws, while the antifa groups protest the state's tolerance of white supremacist groups. There are also gatherings in solidarity with victims of violence, such as those against terrorism in Europe (eg 'Je suis Charlie'), or those in honour of female murder victims in Melbourne (eg Jill Meagher and Eurydice Dixon). These may be categorised as statements of revulsion over the outrageous acts of fellow human beings, as well as against general structural phenomena such as violence against women. Protests can generally be distinguished from gatherings in favour of the status quo, such as Donald Trump's political rallies. Having said that, attendees at those rallies do tend to support messages which rail against certain powerful societal forces, such as the media. Trump is in fact remarkable as a US President who styles himself as being the leader of some sort of opposition.

Protests are about power, or often, lack of it. Protest is not the avenue for change generally adopted by those with power and privilege. After all, they are more likely to have greater access to and influence over those with the power to change things (eg governments). A phone call to the Prime Minister is, sadly, probably more effective as a tool of change than a street march, but it is only possible if one has the number and s/he will pick up the phone. So too is the engagement of a lobbying firm. So too is the phone call to the newspaper editor.

Protest is probably associated with 'left wing' causes more often than 'right wing' causes, but this is simplistic. As noted, anti-immigration protests are reasonably common in Australia, often but not exclusively organised by white supremacist groups. One may also recall the protests against the carbon tax during the days of the Gillard Prime Ministership, or protests in France against its (then) coming law permitting gay marriage.

The act of protest is an exercise of the human right of freedom of expression. The range of expressions involved can vary widely, from mock weddings (eg to protest against an absence of marriage equality) to hunger strikes. Dr Caroline Henckels discusses flag burning as a form of protest in this volume, and whether such protests are protected under the Australian Constitution. Depending on their form, they are often an exercise of the freedoms of assembly and association. They may

also raise other human rights, such as freedom of movement, if protesters should be precluded from entering a certain area. These rights are only protected to a limited extent in Australian law. In any case, all of these rights are subjected to limitations in international human rights law so there is no absolute right to protest.

The extent of the 'right to protest' in Australia is explored in the contribution from Associate Professor Patrick Emerton and Dr Maria O'Sullivan, focusing on the recent High Court challenge to Tasmania's draconian *Workplaces (Protection from Protesters) Act 2014* (Tas) in *Brown v Tasmania* (2017) 261 CLR 328 under the implied constitutional freedom of political communication. This article explores the case in domestic and comparative perspectives, highlighting some weaknesses in Australian protection for protests.

While protests tend to be performed by those without significant power, and are normally against certain government policies, they do not always target those with power. An example in this volume is discussed in the contribution from Dr Ronli Sifris and Dr Tania Penovic, analysing anti-abortion protests and their effect on the wellbeing of women seeking abortions. This article also examines the legislative response to this phenomenon, namely 'safe access zone' legislation which restricts protest rights, and the likely compatibility of that legislation with the implied freedom of political communication.

Protests are, as noted, generally associated with acts which are trying to change some prevailing policy. Often it will be in the form of a demonstration, or expression of disapproval such as flag burning. Sometimes it can involve more direct action. Examples arise in two articles in this volume. Dr Azadeh Dastyari discusses the way churches provided sanctuary to refugees in 2016, which prevented the return of some to offshore processing regimes in Nauru and Papua New Guinea. She analyses the 'legitimacy' lent to acts of resistance regarding refugee policy by the involvement of churches, given their standing in society as well as their historical role as places of sanctuary. In contrast, Associate Professor Gerry Nagtzaam and Associate Professor Douglas Guilfoyle discuss the methods used by the Sea Shepherd Conservation Society to disrupt Japanese whaling in the Southern Ocean. These methods raise complex questions of international law. While those methods, which include direct and dangerous confrontations at sea with Japanese ships, can succeed in saving whales, the authors question whether Sea Shepherd's controversial methods might work against its stated goals by reducing its perceived legitimacy.

While protests often occur in groups, they can also be acts by single people. In 2017 a Tasmanian anarchist headbutted former Prime Minister Tony Abbott, arguably as an act of protest against Abbott's political views (only some of which are entrenched in law and policy). This instance is discussed in Dr Jamie Walvisch's contribution, which focuses on examples where protests have crossed the line into illegality. When that occurs, Dr Walvisch questions how political motivations are, or are not, taken into account in the determination of sentences.

Finally, protests are hardly new. And the marginalisation of protesters, which often manifests the need to protest, is not new either. Dr Stephen Gray discusses

the demonisation and persecution of the Industrial Workers of the World ('IWW'), a radical anti-capitalist group which operated in Australia in the 1910s, and which opposed conscription and World War I generally. The disproportionate use of national security legislation against them has lessons for the use of such legislation in the modern day.

We hope that you enjoy this selection of papers, which we intend to kickstart further research into laws and practices surrounding acts of protest in Australia.

Professor Sarah Joseph

Director

Castan Centre for Human Rights Law

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