AVOIDING TOO MUCH ORDER WITH TOO LITTLE LAW; REFLECTIONS ON THE QUEENSLAND EXPERIENCE

by Frank Brennan S.J.

AVOIDING TOO MUCH ORDER WITH TOO LITTLE LAW

1. The Queensland Street March Ban - A Government Experiment in Repression

> "As you know, in Queensland we have been relatively free of the public disorder which has in recent times reached considerable magnitude in certain other parts of the world. I do not think that it has always been appreciated just how fortunate we have been in this country that public order has been maintained without violent clashes between conflicting groups or between dissident groups and lawful authority." i

So wrote the Premier of Queensland, Mr Johannes Bjelke-Petersen on 23 April 1969. Twelve years later the Governor of Queensland said:[2]

> "We, in this country today, can be grateful that our predecessors, the colonisers of this land, brought with them and instituted the practices of English Law. For it is a dynamic system.
>
> "It can, and must, and will evolve to solve and meet the changes in social, industrial and international relationships taking place in the world today.
>
> "Law and Order' is one of today's important political issues. There is a danger, however that we try to achieve too much order with too little law, by bypassing the Processes we have inherited from those eight centuries of experience and hard fought battles against tyranny. The people of Queensland look to the law to defend their rights."

Something had changed.

In September 1977, the Premier had proclaimed: "The day of political street march is over. Anybody who holds a street march, spontaneous or otherwise', will know they're acting Illegally ... Don't bother applying for a March permit. You won't get one. That's Government policy now."[3] This proclamation was echoed by the

acting police commissioner, and was police policy until April 1978. Brisbane police prohibited most political street marches until August 1979.

Government supporters claimed that the political street march was a recent phenomenon staged for the benefit of modern news media. They said there was no common law right to demonstrate, and police had no choice but to implement the law in its full rigour. They claimed the Queensland system for regulating public meetings and processions was no different in principle and in substance from that adopted in any other state of Australia.

Civil liberties advocates said the new government policy highlighted the defect in public order machinery which required the obtaining of police permission for a political demonstration on a street or footpath. They claimed the inalienable right to demonstrate against government policies was the hallmark of constitutional democracies, and they urged police to avoid a needless polarization of the community.

The police refused to confer with demonstration organizers and adopted the tactic of all-out confrontation at demonstrations, which resulted in 1,972 arrests. Since 18.97, there has been a legal requirement in Queensland that written permission be obtained for the holding of any procession or public meeting upon a road. The only legislative change made by the Queensland Parliament to the Traffic Act covering such pertits in 1977 was the abolition of the right of appeal to a magistrate by an applicant aggrieved by the refusal of a permit by the Queensland Police.[4]

This minor change immediately achieved the Government's intention to quash all legal attempts by the Campaign Against Nuclear Power lobby to protest publicly in Brisbane during the next two years.

The two year march ban did not arise out of threats to the public peace of dimensions unknown before or after the ban or any different from the minimal -.threats in other jurisdictions of Australia during that time. There is now no doubt about the social costs incurred

from that ban including the loss of liberty by almost 2,000 persons who were detained in custody, alienation and frustration of the citizens who wished to express concern and moral outrage about the decisions of Government on an important question (namely the export of uranium without the guarantee of what they saw to be adequate safeguards), a further loss of respect and Community acceptance of the Queensland police force, protracted disruption of traffic and business within the metropolitan area of Brisbane, clogging the Brisbane Magistrates' Courts for months on end, and involvement of the courts in determination of cases clouded with political controversy.

Not only did the ban interfere needlessly with the right or liberty of people to assemble, process and protest publicly; it also threatened law and order rather than preserving it; it disrupted traffic flow rather than facilitating it. The march ban was not only morally objectionable; it was stupid.

On 31 October 1977, after the commencement of the ban, Mr Lewis the Queensland Police Commissioner submitted his first Annual Report for the year ended 30 June 1977 which stated:[5]

> Public behaviour in the streets, during the year under review has been generally good throughout the State.
>
> Some organisations have mounted street demonstrations and marches, mainly in Brisbane, but these were dealt with by police with firmness and tolerance.
>
> Police permitted all lawful demonstrations to take place, but ensured that they were under control at all times. There were only Isolated cases of minor conflict between, police officers and groups of demonstrators in the streets.
>
> Widespread demonstrations which unfortunately followed His Excellency the Governor-General throughout Australia also were experienced in Queensland. These demonstrations, however, did not attract the numerical support or violence which attended other demonstrations outside this State.

Clearly, even the Queensland police were happy with the state of public order in the streets prior to the Government's proclaimed ban.

2. Almost Returning to Common Sense

The march ban was lifted in July 1979; not surprisingly the Annual Report of the Queensland Police for the year following the lifting of the ban states:[6]

> There was a dramatic change in the number of public demonstrations involving civil disobedience of the law compared to previous years.
>
> Only three incidents of any significance occurred, compared with 35 for the previous year. Naturally, the involvement of police was heavily reduced and the number of people arrested fell from 962 last year to 12 in the year under review.
>
> Eight permits were issued to protest groups for street marches in the metropolitan area during the year. No serious problems resulted and they were conducted within the conditions imposed by the District Superintendent of Traffic.'

Next year things improved again. The 1981 report states:[7]

> There was a continuing marked improvement in public behaviour during the year.
>
> While it is clear that crime in general is increasing, the general behaviour of large gatherings of people for a variety of purposes has shown a definite improvement over previous years'. The level of public demonstrations for various, causes has eased, and those that Were held did not require police involvement other than in normal crowd or traffic control roles.
>
> The visible presence of uniformed police on the streets and at venues where large crowds gather has a calming effect on crowd behaviour -and, when this is complemented by the purposeful campaign which has been pursued over a number of years to improve the standing of police officers in the public eye, it ensures support for police officers from an extremely large majority of the community.

As if that was not enough improvement, the 1982 report states 8:

> There was a continuing marked' improvement in public behaviour during the year.
>
> While it is clear that crime in general is increasing, the 'general behaviour of large crowds of people gathered for various purposes has shown a definite improvement over previous years. The level of public demonstrations in support of differing causes has eased, and those that were held did not require police involvement other than normal crowd or traffic control.

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> The visible presence of uniformed police on the streets and at venues where crowds gather has a calming effect on crowd behaviour. When this is complemented by a purposeful campaign which has been pursued in recent years to improve the standing of police officers in the public eye, the support of a large majority of the community for police officers is ensured.

Queensland Police, having abandoned the Government policy of all-out confrontation, returned to a policy of consultation and co-operation. During the Commonwealth Games in 1982, there was some attempt at consultation and co-operation with demonstration organisers. But the conduct of police was affected by their political perceptions and speculations about protesters' states of origin. The 1983 Annual Report states:[9]

> There were very few instances of civil disorder during the year and as a result the need to commit large numbers of police to restoring order was again greatly reduced.
>
> There was again a reduced number of issues which attracted large public demonstrations with a potential for disruption and lawlessness. The only real problems in this area came during the Commonwealth Games when several rallies were held to support Aboriginal land rights and people from southern States swelled the ranks of local protestors.
>
> Despite rallies Which were held on this theme during the period, on only three occasions did extremist elements succeed in attracting enough support for illegal marches. Police reaction was prompt and restrained and all situations were resolved quickly and with a minimum of disruption to the community.

After the Games, the politics once again dropped out of protest and its policing in Brisbane. The 1984 Report claimed success in "the more sympathetic approach by police officers to crowd control":

> There was a marked improvement,-in public behaviour_ during the year, and therefore there was virtually no need to Commit large numbers of police to maintaining the public peace and ,good order.
>
> A visible police .presence at every major public, gathering minimized unruly activities by the minority which Can ruin the enjoyment of other patrons-. It appears that the Department's efforts to improve its community standing through more positive media and public relations Programmes is having a significant effect. Instances of abuse and unpleasantness towards police officers performing their normal duties are less prevalent today than in years past.-

> Despite the more sympathetic approach by police officers to crowd control and a desire to work and play in close harmony with the community, trouble-makers can be assured that police will take firm action where offences are committed and will continue to protect the interests of the public at large.

3. More Repression

But then came the SEQEB power dispute in which police were deployed on another political mission similar to that of 1977-1979. At the behest, or at least in accordance with the wishes, of government, the police reverted to confrontation tactics with picketers outside SEQEB premises. Despite the claim in the 1985 Report that "These incidents ... were well contained and passed off without any major commitment of police resources",[11] unnecessary escalation of confrontation and the loss of 'law and order' have resulted from wooden implementation of antiquated provisions of the Queensland Traffic Act, the exercise of police discretions directed by or at least coincident with government policy, and the relentless exercise of even wider police powers accorded by the Electricity (Continuity of Supply) Act 1985. Under that Act, a police officer can arrest any person whom the officer believes on reasonable grounds to have done any act or made any omission calculated to annoy or distress any SEQEB employee at work or on their way to work.[12]

The Queensland Government's handling of the power dispute was criticised in many quarters, as was the street march ban of 1977-79. Those criticisms received the now characteristic treatment of a long entrenched government. For example, after the Primate of the Anglican Church in Australia, Archbishop Sir John Grindrod, had defended the workers' right to strike, the premier Sir Joh Bjelke Petersen said "he refused to believe a church leader would condone the actions of unionists."[13] When the Archbishop of Canterbury arrived in Brisbane and expressed public support of the Primates views, the Premier urged Dr Runcie to "go back to London and try and do his job of filling those seats." He said "I am staggered when

I go to London and attend church, and I am about the only person there in the great big buildings.'[14]

In support of sacked workers, a group known as the Concerned Christians conducted prayer vigils at early morning pickets ensuring that they did not impede any person's movement, merely singing hymns and standing behind wooden crosses. The abuse of police Power was highlighted by the arrest and subsequent acquittals of some of these 'Concerned Christians'. In the joint hearing of charges against 10 Concerned Christians, the prosecutor showed the scope police were attempting to give to an offence of acting in a way calculated to annoy or distress another. He submitted to the magistrate:[15]

> Your worship, ... not to be ultra-crude, but to use something which I think Is clearly understandable, "if you have the crow of a beak, the feathers of a beak, the feet of a beak, you can't be mistaken for a duck." Now, ... my primary point is this. The actions of these defendants was in fact encouragement to the other demonstrators and in the converse, or ancillary to that, it was discouragement to the S.E.Q.E.B. workers, by their attendance, by their very attendance. Your Worship, it's not outside reality from the ordinary man test, to put ourselves in the place of a S.E.Q.E.B. worker at that location at that time, or in the case of a S.E.QI.E.B. worker, watching the news on that evening. Now your worship can take judicial notice of the fact that these matters were presented on the news. Now, either of those S.E.Q.E.B. workers could make a realistic comment to themselves in these terms, "even the church is against me".

Fortunately this submission failed as did the prosecution of many Concerned Christians. ' In eleven such cases, the prosecutors Sought orders to review from the Supreme Court of- ueeh8lantL In each case the order nisi was discharged as

> "it could not be said that the stipendiary magistrate was wrong in concluding that he was not - satisfied that the conduct of any of the respondents: was calculated, that is, intended or designed to harass any employee an account of his performance or work."[16],,

Protesters not boasting the appellation "Concerned Christian" have

had a harder time of it in the courts. One convicted picketer, unsuccessful in seeking an order to review, was in a group separate from the Concerned Christians who were singing hymns and holding crosses.

> "Members of this group were calling out words such as 'Scab', 'Victory to the E.T.U.' and other slogans, but 'there is no evidence that the appellant was doing so Members of the group all linked their arms together and started chanting slogans such as 'Reinstate 'the linesmen', 'Give the sack to Joh' and 'Victory, to the, E.T.U.', although the evidence did not show that all the persons in the group were chanting such slogans or, in particular, that the appellant was doing so."[17]

Nonetheless the Supreme Court' discharged the order nisi on the basis that there was evidence to support "the conclusion that the act of the appellant was calculated to harass employees of the Board. "[18] He just happened to be standing with the wrong mob. The High Court has granted special leave to appeal in this case.

Upholding law and order is one thing, but protecting the sensibilities of power workers from the prayerful presence of Concerned Christians and even from vocal government critics is another. As with the street march ban, the concern of the Queensland police to do the government's bidding has again resulted in a breakdown rather than a preservation of law and order.

4. The Importance of Public Protest

If constitutional democracies are to be more than elected dictatorships, they must maintain legal andprotected means for the citizen's expression of political discontent. It is facile to claim that the vote, access to a local member, and the availability of a free press are sufficient means.,There are some political issues that prompt feelings of moral outrage' in' the' citizenry The legal and protected means must include means for the communication of such outrage. The most usual means for such communication are the public procession and assembly. A person's physical presence at a place or

an event is the most powerful means of expression for one believing in or committed to a particular cause, person, or collection of persons. -In society, a public gathering of persons is the most powerful means for expression of solidarity, to the group and witness - to those outside the group. It 1.a-to be expected that in relation_ to important political issues about which people feel moral outrage or concern, they will want to use the best and most usual form,of expression andY communication of that outrage or concern.

The United States Supreme Court has stated that

> "the right of the people peacefully to assemble for lawful purposes ... is, and always has been, one of the attributes of citizenship under a free government. It 'derives its source' ... 'from those laws whose authority is acknowledged by civilised man throughout the world'. It is found wherever civilization exists."[19]

It must be assumed that public protest will always be a possibility, and often an actuality, in a constitutional democracy. Thus the public assembly and political procession must be accorded recognized places in the constitutional machinery.

This is not to deny the value of the vote, -the access to politicians, or the availability of a free press. The main issues about which people have demonstrated in Australia recently have been the subject of elections, parliamentary petition, and press coverage. But large numbers Of individuals have wanted-to do-more in expressing their views. Usually they-have-been-permitted, and should always ***be*** permitted, to do so provided they-have not threatened the-public peace or unduly inconvenienced. others who Might not feel the same concern or outrage Or who might not share the same-Views- It is not a matter of balancing the right to protest over and against the need to preserve public order and the smooth flow of traffic. The recent Queensland experience proves conclusively that there is not any direct proportionality between two measurable--quantities yielding the simplistic formula that the "inalienable right to protest" results in a situation of lawlessness and unmitigated disruption to traffic and the lives of others; while the denial of the right to protest results in complete law and order, smooth traffic flow and

the guarantee that people can go about their lawful business.

The state must make provision for public protest activity respecting such activity as a right or liberty of the subject while at the same time accommodating the exercise of this right or liberty within the confines of urbanised living dominated by the motorcar, the market place and high-rise development.

There has to be regulation of public protest, not as censorship or political oppression but as the regulation of traffic; there has to be protection given to all citizens from threat of violence and disorder, not in a quest for quietism or elimination of political differences but so as to preserve the peace without which constitutional government and civilised living collapse.

Having accepted the place of public protest, it is necessary to make provision for its achievement under the law.

5. Accommodating Public Protest

In all Australian jurisdictions there are laws prohibiting breaches of the peace and like offences whether or not one is a member of a procession or assembly.

Persons who assemble with intent to commit a crime by open force or to carry out any common purpose in such manner as to give firm and courageous persons in the vicinity reasonable grounds to apprehend a breach of the peace are members of an unlawful assembly and that is an offence in all jurisdictions.[20] Riot or its equivalent is also an offence in each jurisdiction.[21]

No jurisdiction except Western Australia has laws generally governing public meetings held in public places; however most councils do have by-laws governing public meetings which are held on land controlled by councils. All jurisdictions have laws and policies affecting the holding of assemblies on roads.

While some Australian jurisdictions have adopted notifiCation. and consultation systems for policing public protest Activity, Queensland has retained a permit system without provision for appeal' to a court in the event of police refusal.

The notification system with provision for a judicial hearing to determine Conflicts when demonstration organisers and police cannot agree has been adopted successfully in some jurisdictions. It has worked well in South Australia for 14 years and in New South Wales for the last 7 years.

This system encourages police-demonstrator co-operation, it recognizes the right to protest, and it provides the law's best machinery for resolving the competing claims of road users. Above all, it has preserved the peace.

If permit systems are to be maintained, the aggrieved applicant should be assured a right of appeal to a court.[22] After all, it was Sir Joh Bjelke-Petersen himself defending the Queensland Traffic Act as it was prior to 1977, who said:[23]

> There is ample right of application to the Courts provided in the legislation for those who feel that the District Superintendent of Traffic has treated them unfairly.
>
> I would point out that in regulating processions, meetings, etc., the District Superintendent of Traffic, apart from ensuring the free and orderly movement of traffic, has also to organise such matters so that groups of persons who hold or are likely to hold conflicting views, whilst being able to freely express those views, are separated by time or locality.

Recent Queensland experience has 'demonstrated that polite control of political protest with no provision for judicial review (except prerogative relief) results in periodic Abuses of power in accordance with government policy. inevitably, police independence and integrity have been impugned.' Traffic 'control and the preservation of the peace can become very political 'business when demonstrators are protesting vehemently, though peaceably, against decisions of the

government of the day. In quashing protest so as to maintain the peace, or to protect the rights of others, police can be seen to be, and may become, the agents of government and its protectors during times of political controversy. Thus independence and integrity are essential if the public including the protesters are to have any trust in the police who have to perform the balancing of rights on the day,- in the street. In exercising their traffic control powers in situations of potential political conflict, police may be given and often require directives from the government of the day. In so far as it is possible, the police should be spared the image of partisanship and should tread the narrow line between making political decisions themselves and blindly carrying out controversial government decisions.

6. The Need for Good Faith

Whether or not there be civil supervision of police decisions banning or restricting public protest, and whether or not there be a procedure stipulated by legislation for notification or application for permission regarding public protest activities, there must be consultation and good faith between police and protest organisers. Refusal by either party to consult jeopardises public peace;- as-does political conduct by either party which is calculated to impugn the public standing of the other party. , Politicians, senior police, and protest organisers have a duty to provide accurate information to each other and the public so that there might be a right balancing of interests. The "disinformation" disseminated by the Queensland' Government in the lead up to the Commonwealth Games undermined public confidence in the police as well as protesters' hopes of a fair go under the gaze of internatiqual7,Y—crews,

In reply to the second reading debate on the Commonwealth Games Act in 1982, Mr Hinze who was then Queensland Minister for Police thought it necessary to retrace certain events that had occurred since the legislation was introduced. He referred to recent events

including "allegations that a secret black army has been in training specifically to provoke violence in Brisbane during the GaMes.'[24] Next day the Premier made a statement reported in the Australian alleging "that six Aborigines are presently.in Libya undergoing guerilla and terrorist training."[25]

Next day, the Leader of the Opposition asked Mr Hinze if he would table in Parliament the information received regarding the supposed training of Aborigines in terrorism in Libya. Mr Hinze declined but indicated that he had been presented with a document by the Police Commissioner. Being a responsible minister he conveyed the information to the Premier. He added: "It is his duty as Premier to convey the information which has international overtones., to the Prime Minister. That was done. As to tabling the document - if the Premier wishes to do that, he may do so; it is entirely up to him."[26] The document was never tabled.

A question was placed on notice about the matter in the Senate.[27] No answer was received for 6 weeks. The Minister for Foreign Affairs provided the answer: "I am advised that inquiries conducted by my Department and other relevant authorities have produced no evidence to verify that Aboriginals are currently undergoing guerilla or terrorist training in Libya.'[28] Next day Senator 'Baum, the Minister for Aboriginal Affairs, told the Senate: "I know of no evidence to support the assertions that Aboriginals are training in Libya. That whole story is quite fanciful. I must say that those kind of statements will occur; people will say these kind of things from time to time It may be that a Premier receives from one source or another information that may eventually prove to be false.

Meanwhile six weeks of disinformation by the highest level of Government had occurred. The information was seen to be a partial justification for the Commonwealth Games Act. This exercise by Government, assisted by a report from the Police Commissioner did nothing to guarantee preservation of the peace or the peaceful conduct of the Commonwealth Games. The price of such smear campaigns is too high for the state to pay. They place at risk not only the

reputations of those who are smeared but also the fragile balance which can truly be called 'law and order', i.e. social order under the rule of law.

7. Keeping Out the Unwelcome, Unsympathetic Protesters.

In recent years, the Anzac Day ceremonies in some metropolitan areas have been marked by conflict between groups called Women Against Rape in War and members of the R.S.L. and police authorities. Many Australians, including members of the R.S.L. see Anzac Day as

> a national day of remembrance for the purpose of commemorating members of Australian armed forces and their auxiliary services who served Australia in the cause of freedom and who suffered death, injury or loss as a result of their service as members of those forces in the course of armed conflicts in which those forces were engaged.[30]

Other Australians, including the Women Against Rape in War, *see* the day as a commemoration of all, good and bad, that is associated with war in the hope that the national consciousness while treasuring those who died for freedom will tolerate the freedom to express horror about war and all that goes with it.

In the Australian Capital Territory, the Public Assemblies Ordinance became law prior to the 1982 Anzac Day procession. As well as adopting the notification system for ordinary processions, this Ordinance also created a new legal beast known as the "limited participation assembly" which could exist only on designated days, the main one of which is Anzac Day. The Ordinance allowed the organiser of a procession, for example the President of the R.S.L., to apply to the Police Commissioner to conduct a limited participation assembly on Anzac Day. The notification then had to be publicised and other persons or organisations could apply to the Commissioner to join the assembly. Under amendments made to the Ordinance in December 1982, those applications, if any, were to be forwarded by the Commissioner to the organiser allowing the organiser to object to any application. At the end of the day, the Commissioner was able to allow or object to a limited participation assembly and could allow

or disallow others to join such an assembly. Any person aggrieved by any of these decisions could then apply to the Supreme Court for review of the decision.

The purpose of the Ordinance was explained by Senator Shirley Walters in these terms:[31]

> We are trying in this place to avoid what happens overseas. Ten years ago there was never a thought in any Australian's mind that people would disrupt an Anzac Day march. Ten years ago thought was never given by any, group to daring to march and upset the Anzac Day traditions. Times have changed. We now have radical groups which would like to march and upset the traditional Anzac Day service. I believe that it is the duty and responsibility of government to protect the right to march of people who fought in wars to protect our country.

The Ordinance was put to the test in the preparations for Anzac Day 1982. After the R.S.L. notified its intention to hold a limited participation assembly, several persons applied to the Commissioner on behalf of their organisations to join the assembly. According to the Police Commissioner, the applicants'

> purpose was couched in similar terms to that advised by the Returned Services League of Australia and the Australian War Memorial, and, as I had no reason to believe that their presence in the Anzac Day March would be likely to lead to violence or serious breaches of public disorder or one of the other exceptions under the Ordinance, then I had no option under the terms of the Ordinance but to approve their participation. My adherence to the law aroused considerable controversy and received constant Media coverage, despite the fact that those principally concerned were all very well aware of, the legal 06SitiOn. As a result of these pressures, to many it would have seemed easy to have followed the dictates of tradition and reserve the Anzac Day Match for serving members of the Armed Forces and ex-Service men and women. That' easy option had not been selected by the legislature and it was therefore not open to me.[32]

So the legislation -in all its complexity, fairly applied, did not result in the guaranteed exclusion of those whom the organisers did not wish to have march with them. In the end, the Police Commissioner organised a round-table conference which resulted: in the persons who

wished to join the procession against the wishes of the R.S.L. withdrawing their applications. The cumbersome and amended ordinance was repealed before Anzac Day 1983.

Senator Austin Lewis then introduced into the Senate a private Member's Bill. The Anzac Day Bill sought to achieve directly what the Ordinance could not achieve indirectly. It omitted the Police Commissioner from the application procedure and replaced him with the President of the R.S.L. who was to be empowered to grant or refuse permission to persons or groups of persons to participate in an Anzac Day observance. An aggrieved applicant would have been able to apply to the Federal Court for review of the President's decision. The Bill was never passed; neither should it have been.

The Bill contained a procedure not designed to balance the competing claims of road-users, nor designed for the proper regulation of traffic nor designed for the preservation of the peace. All those considerations were to be overridden by a concern to restrict participation in an observance to those approved by the R.S.L. Leaving aside considerations of the difficulty for police implementing the decision on the day in determining who is a member of an approved group and who is not, there is a more fundamental question to be addressed.

As a citizen, .I would prefer to witness an Anzac Day observance in which the participants were only those whose predominant desire was to honour fallen comrades. If the time has come when there are citizens who, without breaching the peace and without causing - unreasonable obstruction to others, wish to participate in the Anzac Day observance calling attention to other aspects of War or other aspects of other things, surely they should be able to exercise that freedom, the freedom for which those comrades died, but only to the extent that they do not interfere with the good conduct of the observance. I and many others might find their actions to be disrespectful, in bad taste, politically naive, or even politically sinister. But tolerance and freedom demand tolerating the intolerant and granting freedom to those who are so impelled by

their message as to deny even the old and infirm fighters the opportunity once a year silently, respectfully and single-mindedly to honour their fallen comrades. I am suggesting that this social problem is not to be overcome by legal prohibition because such prohibition is practically unworkable and philosophically objectionable. You cannot legislate for loyalty, respect or love. To attempt to do so is to forfeit the freedom without which loyalty, love and respect cannot survive.

The behaviour of the "punk-anarchists" at the 1986 Melbourne Palm Sunday Peace Rally created problems for the Rally organisers similar to those encountered by the R.S.L. at recent Anzac Day Processions. The peace organisers were powerless to do anything except to ask the anarchists to respect the peace-loving disposition of the majority present. You cannot legislate for peace, neither can you exclude citizens from public activities unless there be grounds for suspecting their commitment to disruption amounting to breach of the peace. If the law maintains the peace and a balancing of rights, people in communication can come to accommodate each other and the community can manifest those virtues which thrive and are at risk in an atmosphere of freedom. If the spirit of Anzac Day or Palm Sunday has died it cannot be resurrected by legislation; if it lives, it will continue robustly and undefiled only in that atmosphere of freedom.

8. The Limited Right to Protest Publicly and Peacefully, Even if not Quietly and Quickly

In his Report of the Inquiry into the Red Lion Square Disorder, Lord Scarman said:[33]

> Amongst our' fundamental human rights there are, without doubt, the rights of peaceful assembly and public protest and the right to public order and tranquility. Civilised living collapses - it is obvious - if public protest becomes violent protest or public order degenerates into the quietism imposed by successful oppression. But the problem is more complex than a choice between two extremes - one, a right to protest

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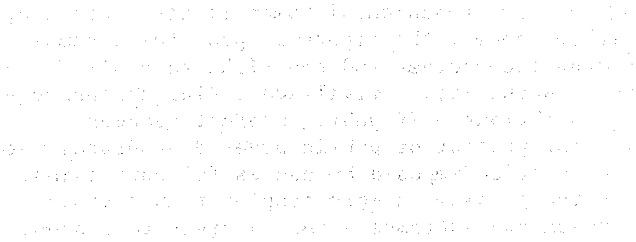
> whenever and wherever you will and the other, a right to continuous calm upon our streets unruffled by the noise and obstructive pressure of the protesting procession. A balance has to be struck, a compromise found that will accommodate the exercise of the right to protest within a framework of public order which enables ordinary citizens, who are not protesting, to go about their business and pleasure without obstruction or inconvenience.

That balance can no longer be assured without the guarantee of individual rights; and the balance is a prerequisite for peace. The "general democratic right to protest against unwelcome political decisions"[34] must become a juristic right.

Recent Queensland experiments have shown that the executive can become little less than a god immune from political debate and legal challenge. Aristotle said: "The man who is isolated - who is unable to share in the benefits of political association, or has no need to share because he is already self-sufficient - is no part of the polls and must therefore be a beast or a god."[35] In Queensland, that isolation has protected the executive and imperilled the citizenry. Legislative reforms providing the right to demonstrate, the proper exercise of police discretions, responsible actions by demonstrators, and the vigilance of the courts are required to humanize the god and save the beast. Needless violence, disorder and lack of communication between police and demonstrators must be avoided so that the thin blue line might be maintained intact and respected for the time it is needed.



FOOTNOTES

1 Letter of J. Bjelke-Petersen to R. Wensley, 23 April 1969.

Address by His Excellency, Governor of Queensland, Opening of Law Courts, Brisbane, 2 September 1981.

Courier Mail, 5 September 1977

4 s.57A, inserted in Traffic Act by Traffic Act Amendment Act 1977.

Queensland Police, Annual Report 1977, p.12.

6 1980, p.19.

7 1981, p.18.

8 1982, 0.18.

9 1983, p.22.

10 1984, p.20.

11 1985, p.19.

12 Electricity (Continuity of Supply) Act 1985, *ss.5,* 5A.

13 Courier Mail, 9 April 1985.

14 Courier Mail, 17 April 1985.

15 Magistrates Court Transcript of Proceedings, No.7893 of 1985, Mr Fardon S.M., reproduced in "Concerned Christians and Their Involvement in the Dispute", M. McGregor-Lowndes, Trinity Occasional Papers, Vol.4, No.2, Trinity Theological College, Brisbane, pp.78-79.

16 Betts & Others v Cribb & Others, Ex Parte Betts, Judgment of Full Court of the Supreme Court of Queensland, 0.S.C. No.23 of 1985, 25 October 1985, Judgment of Kelly S.P.J., p.2. See also Beattie v Kindness, Ex Parte Beattie, O.S.C. No.22 of 1985.

17 O'Sullivan v Lunon, Ex Parte O'Sullivan, O.S.C. No.14 of 1985, Judgment of Kelly S.P.J., p.2.

18 Ibid. p.6.

19 United States v Cruikshank (1876) 92 U.S. 552.

20 *See* s.545C, Crimes Act (N.S.W.); s.62, Criminal Code ((rid); s.63, Criminal Code N.A.); s.74, Criminal Code (Tas); s.6, Public Order (Protection of Persons and Places) Act 1971 (C'w1th); common law offence in Victoria and South Australia.

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21 See 5.5, Unlawful Assemblies & Processions Act 1958 (Vic); s.63, Criminal Code (Q'1d); s.244, Criminal Law Consolidation Act (S.A.); s.64, Criminal Code (W.A.); s.75, Criminal Code (Tas); s.8, Public Order (Protection bf Persons & Property) Act 1971 (C'w1th); common law offence, N.S.W.

22 This course has been adopted recently in Western Australia in the Public Meetings and Processions Act 1984.

23 Letter of J. Bjelke-Petersen to R. Wensley, 23 April 1969.

24 1982 QPD 4541; 9 March 1982.

25 Australian, 11 March 1982.

26 1982 QPD 4667; 11 March 1982.

27 1982 CPD (Senate) 692; 11 March 1982.

28 1982 CPD (Senate) 1335; 20 April 1982.

29 1982 CPD (Senate) 1424; 21-2 April 1982.

30 c1.4, Anzac Day Bill, Senate, No.56 of 1983.

31 1982 CPD (Senate) 1380; 21 April 1982.

32 Australian Federal Police, Annual Report 1981-2, p.

33 1975 Cmnd 5915, para 5.

34 Campbell v Samuels (1980) 23 SASR 389 at 393 (Zelling J).

35 Aristotle, The Politics 1.2.14 (1253a).