

PROTEST: A POLICE PERSPECTIVE

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INTRODUCTION

I Welcome the opportunity to speak to this seminar and to provide a police perspective.

Too often when the question of "protest" arises, involved parties instinctively move to their "corners" and adopt an intransigent stand. It may sound naive, but I am firmly of the view that positive approaches by protestors and police can result in establishing considerable common ground, and in some cases, relative harmony. Therein, of course, lies the benefit of this gathering, and towards that end I intend to be frank and as objective as possible.

A particular philosophy or ideology held by a police department impacts significantly on the police tactical plan: it goes without saying that a positive and progressive policy will go a long way towards influencing individual police behaviour on the streets. The opposite, more dramatically, can bring about disastrous results. With the incidence of protest and civil disobedience rising, police in Australia should develop a uniform and professional approach to the issue. In this paper I canvass the matters which to me seem important in this area, which includes the legal precedent of public behaviour, attitudes of protestors, policy and attitudes of police, and the media with some case studies to highlight some of the points made.

THE RIGHT TO PROTEST

Police policy makers must acknowledge the right to assemble and voice opinion. Alexis de Tocqueville spoke of the right of assembly:

The most natural privilege of man, next to the right of acting for himself, is that of combining his assertions with those of his fellow creatures, and of acting in common with them. The right of association therefore appears to me to be almost as inalienable in its nature as the right of personal liberty. [1]

Modern statements to the same effect are embodied in Declarations of Human Rights and International Covenants on Civil and Political Rights which Australia has ratified. [2]

The right to assemble and protest carries with it several expectations about behavioural standards, public access-, public peace and general observance of laws. Police enter the arena with two broad charters of enforcing the law and maintaining public peace and tranquility.

Sometimes, as this paper shows, one can only be done at the expense of the other. The balance which police have to strike alongside these requirements is the preservation of the protestors' right of assembly and speech. The dichotomy between the right to demonstrate and the right to the general maintenance of order was alluded to by Lord Justice Scarman, in 1974 when he said:'

Amongst our fundamental human rights there are, without doubt, the rights of peaceful assembly and to public protest and the right to public order and tranquility. Civilized living collapses - it is obvious - if public protest becomes violent protest or public order degenerates into the quietism imposed by successful oppression....

A balance has to be struck, a compromise found that will accommodate the exercise of 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.

[3]

Legal precedent has long backed up this proposal, the obstruction or inconvenience being regarded as a "public nuisance", That is:

an act not warranted by law or an omission to discharge a legal duty, which act or omission obstructs or causes inconvenience or damage to the public in the exercise of (citizens') rights.

[4]

Reasonableness of the use of a thoroughfare should be determined by considering such factors as the occasion, the duration of the use, the place and the hour. The irony here is that each of these factors attracts the attention of the protestor and the police alike, but for diametrically opposed reasons. While the police look to these criteria with a view to exercising the direction to intervene, protestors, look to breach them for the purpose of attracting attention to the cause.

The concept of civil disobedience has a component of non-violence. Notwithstanding that, the late Sir Charles Bright in 1970 in the Royal Commission into the Moratorium Demonstration in Adelaide, pointed out:

I do not see that an intention to be non-violent creates by itself a normal right to break the law in the course of a demonstration. Non-violence is a praiseworthy but not an essential attribute of law breaking demonstrators, and a group, however non-violent, which breaks the law to prove a point, may excite a violent reaction from those opposed to it. [5]

And again:

If the group claims a "right" based on the "rightness" of its cause, there is, as it seems to me, an unjustifiable assumption. [6]

It would be dishonest of me suggest that police always detach themselves from the issues which have prompted the protest. You wouldn't have to stretch the imagination to conclude that a protest demonstration on "harsher penalties for criminals," "stricter parole conditions" and "rights of victims" would generally find favour with most police. You may even find them linking arms with protestors if the demonstration was for "more pay for police". But the type of person concerned about these issues is usually not likely to rally in the streets. The policemen, with a generally conservative ideology often finds him/herself involved in policing protests on issues which he/she is totally against. A swell of conservative public opinion through the media may well add to negative or opposing thoughts on the issue.

Quite naturally, police will have preconceived ideas about the "rightness" or "wrongness" of the issue and they take this with them to the demonstration, but total impartiality in the performance of their function is the only acceptable approach. To be otherwise completely detracts from their true function and would justifiably attract the strongest criticism. For police to promote what they see to be a popular view or the wishes of the current government is contrary to the democratic process.

The only thing worse than the senior police officer in the field allowing his own preconceived ideas of rightness to influence his policing tactics, is for his superiors, as policy makers, condoning it. A sound policy, which underlines the rights of assembly and freedom of speech, must be adopted by the police executive and it should be made known to all ranks. Field supervisors should be constantly vigilant during the exercise to make sure that it is adhered to, and briefings before each exercise should canvass it. Even as a matter of effective tactics, a cool dispassionate and balanced approach allows police to concentrate on the task.

Unfounded, unfair, or biased attention paid to a particular group will certainly run the risk of producing conflict, resistance, violence, and possibly riot.

Some protests will end up in violence even with well meaning and thoroughly professional approaches by police, and even though the organisers of the protest have, in good faith, tried to maintain a peaceful profile. Many reasons of course, cause this to be brought

about. From my point of view, if the organisers genuinely intend a peaceful protest they should meet police before hand. If protestors intend breaking laws as an essential part of the demonstration, I would not of course expect this to happen. Police are not likely to nod contentedly and wish you luck if you tell them of your intention to throw pigs blood over the Pope or sail your small yacht in front of a visiting American battleship.

Indeed if, as I understand the principles of civil disobedience, it is believed that normal political avenues have been attempted and law breaking is the only alternative, the consequences must be expected. And when police move in to arrest and there is some resistance of course there is going to be some use of force. Even minimal force, as the police are only justified in using, can invite violent behaviour from not only the person being arrested but also others in the vicinity. Other demonstrators, quite naturally will be emotionally charged and may try to interfere making themselves liable (if they were not before) to arrest also. Bystanders who may be opposed to the issue, or simply to the radical principle of protest, might be similarly moved to vent feelings against the demonstrators.

Police can never really "win" at a demonstration where laws are broken. If an extremely tolerant stance is taken, the general public complain of permitting anarchy, together with those in the immediate vicinity who complain of inconvenience or discomfort. If arrests are made police are

invariably criticised by the protestors as over-reacting. Sometimes if the police field officer approaches the task on the firm tactic of enforcing: law and order it will incite violence and therefore be in conflict with his other duty of maintaining peace and tranquility. Each circumstance_ is different and calls for specific decisions, but clearly in my mind, the preservation of peace is paramount even where breaches of the law are being committed. Criminal sanction is not always the best remedy anyway. Quite apart from the sometimes used tactic of demonstrators wanting to "clog up the system" the prime objective of police is to 'remove' the problem. Ejecting trespassers, for example, once done, achieves that end. A criminal court process and conviction, given the reasons for the occupation in the first place is not always appropriate either.

Dr. Michael Bossley, the National Convenor for the Greenpeace Movement in Australia speaking of the four justified" reasons for civil disobedience said in Adelaide, in 1985, of two of them:

- 1.
- 2 the object of the protest must be clear and
.
 a substantial violation of... .natural justice.
-
 3.
 the act of dissent must be rational and be designed to meet
the protestor's aims. And those aims, are, in our case, socio-
political change.

Not written here, but the use of the media is inextricably linked to these two criteria. It is only my view, but I consider most demonstrations to go too far and then incur the opposite effect of what they set out to achieve. It is not always the "right wing" or sensationalist" press which brings about the adverse coverage. An excellent case study exists in the Roxby Down blockades. Below is a sample of the editorials from the press - note the changing tone:

...although the demonstrators represent a diminishing minority, liberal-minded people will accept their right to protest, sometimes even agonisingly sympathising with their sincerity - but only so long as the protest is peaceful and not a violent disruption of the miners to go about their legitimate business.

Advertiser, 13 August, 1984

...most of the protestors themselves must regret the vigorous clashes we witnessed last week when a few protestors, flexing what_ they consider, sophisticated techniques of exploiting honest reporting by the media, felt that violence appeared to the public as promoting their cause; it is more likely that the majority regrets it,

seeing that it does in fact damage the cause.
...what it lost most was that some 200 peaceful
protestors sat by and did not help keep the peace
when rows erupted.

Advertiser, 3 September, 1984

The Roxby Downs protestors have made their point....
Having exercised their freedom to dissent they should
do themselves a favour, fold their tents and silently
steal away.

News 4 September, 1984

The society that believes in the democratic right to
protest simply is growing tired of the irritating
antics of those who continue to espouse a lost cause...
The greatest anger this latest in a long line of
unpopular skirmishes prevents is that protest itself
and the right to it - is coming perilously close to
getting a bad name... .The protest has done absolutely
nothing to move public opinion.

News 19 September, 1986

Patience with the ideas of others is a virtue necessary to a free society, but the anti-uranium movement is stretching this patience to an impossible limit. It would be a shame if the experience soured the next generation or two against the expression of peaceful dissent in the pursuit of other heartfelt causes.

Advertiser 13 November, 1984

Police too are (or at least should be if they are not) conscious of their media image. When the whole thing is done and finished they have to go about their duties which essentially relies on the cooperation of the community at large. At Roxby Downs police by:

- pre-planning strategies;
- . remaining totally impartial;
- concentrating on maintaining peace only as a prime objective; utilising the provisions of statute placed only those cases before the court which were appropriate - in one operation they simply "removed" a large number of demonstrators;

attracted. only praise by the media and ultimately the public at large. From a protestor's point the worst of all happened - all of the attention was paid to the professional and sensitive handling by police. Despite the obvious well-meaning and peaceful protestors present, the only media attention they attracted was the use of violence by others.

It really goes without saying, that violence on the part of the police, except in self defence or the defence of others, should not be tolerated, "Police baiting" by protestors can evoke unprofessional behaviour from police, which is properly criticised by the courts. Dame Roma Mitchell at a Conference in Adelaide in 1985 made the point that no-one would really expect a police officer to behave with complete composure during the turmoil created by an act of civil disobedience. Progressive police forces should not however, regard this as a reason or excuse for precipitous and emotional actions of police in the field.

While the police, like the protestors, are bound by the law, they are also equally entitled to enjoy the privileges of human rights. Dame Roma at the same Conference, drew attention to this, and the parallel of "human responsibilities" to "human rights" in the context of insulting and degrading behaviour of some protestors towards police. The worst thing that police could do in response to such behaviour is to match it. The only acceptable standards of police are self-discipline, restraint, impartiality and all arrests being preceded by reasonable cause. Enlightened policy and sound training is, therefore, a necessary prerequisite.

Increasing tensions in political, social and economic life are not abating, and the sort of violent consequences we see in other parts of the world may one day be seen in Australian cities', The growing unrest in

this country, the willingness to take to the streets, and the new and more sophisticated methods and ploys of civil disobedience (even without violence) introduces new dimensions to policing. Society expects "more of the police in their role as policemen than we demand of ordinary persons," and we have to meet the challenge. [7]

"By developing a planned and consistent approach to the problem of civil disorder," Mr. David Hunt, Commissioner of Police for South Australia has said, "police can ensure that they carry out their duties with restraint and discretion,- so that civil disorder is confined within the parameters defined by the requirements of public order and safety...." [8]

Summarizing on effective policing strategy he included:

- A recognition of the right of the public to engage in non-violent protest, dissent, free association and free assembly.
- A policy which aims to -contain • demonstrations within the parameters defined by the requirements of public order and safety and to reduce the potential for politically motivated violence and riot or mob action.
- An operational principle of the consistent and -non-discriminatory application of the use of minimum force required to contain or neutralise the threat of politically motivated force, to protect public and private property and to ensure the physical safety and freedom of movement of citizens.

- A plan which enables police management and operational personnel to control protests. Such a plan should involve the gathering of informed and accurate intelligence on the aims, strategies and behaviour of protest groups. In addition there should be physical preparations prior to the protest event such as dress rehearsals and operational personnel should be briefed fully on the approach which is to be adopted during the protest.

- Police at all levels should be adequately trained to handle civil disorder. Such training should involve a wide range of factors from psychological behaviour through to physical restraint techniques and include systematic feedback from actual field experience in the form of reports from past disturbances which describe, analyse and report on problems and/or successful tactics. The need for special training of selected forces to be called upon in more difficult protest situations should also be considered.

- Proper equipment must be available to police when required to enable (them) to control events without the use of excessive force.

REFERENCES

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2. Article 20, Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations Organisation on 10 December, 1948; and The International Covenant on Civil and Political Rights.
3. Lord Justice Scarman, (1975) Cmnd. 5919, para 5.
4. Stephen, DIGEST 3rd edit., art. 176; Smith and Hogan, Criminal Law, 2nd edit., (Butterworth, 1969) p. 562.
5. Royal Commission on the September Moratorium Demonstration, (Bright Report), (South Australia, 1970) P. 212.
6. Ibid, p. 213.
7. Stark, quoted by G.M.McGrath, "Civil Disorder: The Identification of Precipitating Factors," Conference on Civil Disorder and Crowd Control, Adelaide, 1985.
8. D.A. Hunt, "Opening Address," Conference on Civil Disorder and Crowd Control, Adelaide, 1985.

