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***Legrand, T. & Bronitt, S. 2015. Policing the G20 Protests: 'Too Much Order With Too Little Law' Revisited, The Queensland Review. 22(1), 3-12.***

## **Policing the G20 Protests: 'Too Much Order with Too Little Law' Revisited<sup>1</sup>**

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In the months leading up to November's G20 summit in 2014, Brisbane's residents would have been forgiven for anticipating the outbreak of a local civil war. Media outlets were leading with headlines stating, amongst other sensational claims, 'G20 anarchists vow chaos and mayhem for Brisbane's streets',<sup>2</sup> 'Black Bloc tactics aim for Brisbane G20 shock and awe'<sup>3</sup> and 'Destructive protest plan for G20'.<sup>4</sup> Meanwhile, some of the most severe restrictions on civil liberties seen in Australia in recent years were legislated by the Queensland Parliament. The *G20 Safety and Security Act 2013* (Qld) (hereafter the 'G20 Act') was passed with little demur by a chamber that was only divided over the question of whether the laws were severe enough; the Queensland Opposition police spokesman Bill Byrne MP declaring himself 'surprised' at the leniency of some of the sentencing provisions and the 'minimalist' approach to restriction areas.<sup>5</sup> Of course, in the event the much-anticipated violence did not precipitate and the media's pre-summit hyperbole

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<sup>1</sup> The authors would like to thank the two anonymous reviewers for their insightful commentary and suggestions. We are also indebted to Assistant Commissioner Katarina Carroll, QPS, who generously shared relevant material and constructive comments on an earlier draft. Any errors remain the authors' alone.

<sup>2</sup> The Courier Mail, 9<sup>th</sup> December 2013. See <http://www.couriermail.com.au/news/queensland/g20-anarchists-vow-chaos-and-mayhem-for-brisbanes-streets/story-fnihsrf2-1226778265923> accessed 1st December 2014

<sup>3</sup> The Courier Mail, 9<sup>th</sup> December 2013. See <http://www.couriermail.com.au/news/queensland/black-bloc-tactics-aim-for-brisbane-g20-shock-and-awe/story-fnihsrf2-1226778249656> accessed 3rd December 2014

<sup>4</sup> The Australian, 27<sup>th</sup> September 2014. See <http://www.theaustralian.com.au/news/latest-news/destructive-protest-plan-for-g20/story-fn3dxiwe-1227072300950> accessed 1st December 2014

<sup>5</sup> Queensland, *Parliamentary Debates*, Legislative Assembly, 29<sup>th</sup> October 2013, 3652 (Bill Byrne).

was exposed as just that. Rather more prosaically – and accurately - the post-event headlines dutifully reported ‘Passionate, but mostly peaceful protests’ and ‘G20 protest day wraps up peacefully’. Given that previous G20 summits in London and Toronto saw outbreaks of considerable disorder, we might succumb to the temptation to declare the peaceful protests in Brisbane a vindication of the heavy powers granted by the Queensland Parliament. But we think that to do so would be egregious. Here we reflect on the historical and political motivations underpinning the G20 Act and draw attention to the rather more measured policing strategy employed by the Queensland Police Service (QPS). In doing so we argue that the safety and security of G20 participants and protesters owed little to the restrictive powers granted by the G20 Act, but to a policing strategy that successfully married traditional and modern precepts of policing large events.

*Political Dissent in Queensland: an Ignoble History*

Three decades ago the distinguished lawyer, social justice advocate and Jesuit, Frank Brennan SJ, published a book titled *Too Much Order with Too Little Law*.<sup>6</sup> It was a masterful study of the role of political protest in modern democracy, tracing the history of political protest in England, Australia, and linking his thesis to how fundamental rights and liberties had been severely and unjustifiably eroded in Queensland over the previous decades. It would be well known to many readers of this publication, often at first hand, that between 1977 and 1979, the then Premier of Queensland, Joh Bjelke-Petersen, placed a ban on all street demonstrations. The effect of his edict was that public assemblies in Brisbane, however peaceful, were for practical purposes outlawed. In the absence of any constitutional or legislative right to free expression or peaceful assembly, protestors were vulnerable to arrest for a range of summary offences, such as obstruction and public nuisance offences. As Brennan noted, “police refused to confer with demonstration organizers and adopted the tactic of all-out confrontation at demonstrations, which resulted in 1,972 arrests.”<sup>7</sup>

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<sup>6</sup> F Brennan, *Too Much Order With Too Little Law* (St Lucia, Qld: University of Queensland Press, 1983),

<sup>7</sup> *Ibid*, p 1.

The Fitzgerald Royal Commission (1987-1989) exposed the culture of corruption within Bjelke-Petersen's government and senior police, and ultimately, signaled the end of National Party rule in 1989.<sup>8</sup> The incoming Labor Government, led by Wayne Goss, tackled corruption with reformist zeal: it established the Criminal Justice Commission to investigate corruption in public office and abolished the Queensland Police Special Branch that for decades had exercised an unlawful covert surveillance over 'subversive' political protest groups. Perhaps the most significant measure of that time was the *Peaceful Assembly Act 1991* (PAA). The PAA may be viewed as one of the most enduring legacies of this era, a symbolic statement signaling a change in political culture and the end of the oppressive policing of political dissent. Peaceful protest in Queensland was not something that citizens enjoyed under terms set by the government of the day or police: it was now a secure *legal* right protected by legislation. Queensland had come a long way from its zero tolerance attitude to public street demonstrations in the late 70s. The law, for the first time, expressly recognized the civil and political rights of protestors, placing limits on the powers of police to obstruct protestors, rather than vice versa!

The PAA provides immunity from liability for various laws that would otherwise prohibit or restrict the exercise of that right, such as laws governing the movement of traffic and pedestrians, as well as loitering and obstruction offences (PAA s 6). The immunity is available only where the assembly has been subject to *prior* police approval, though participation in an assembly that is not previously approved does not of itself constitute an offence. Organisers and protesters participating without approval simply forfeit their immunity from prosecution under prescribed offences: (PAA ss 3, 6(1)). This framework regulating public assemblies in Queensland conforms to the International Covenant on Civil and Political Rights (ICCPR) since the grounds for restricting assemblies precisely mirrors the restrictions applied in Art 21. The PAA aims to balance the rights of those participating in the public assembly against the

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<sup>8</sup> The Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct (the *Fitzgerald Inquiry*) (1987-1989).

legitimate interests of others. The right to peaceful assembly, like freedom of expression, is not absolute. The legislative objectives contained in s2(1)(c) provide that the existence of the right to participate in public assemblies is subject only to such restrictions as are necessary and reasonable in a democratic society in the interests of:

- (1) public safety;
- (2) public order; or
- (3) protection of rights and freedoms of other persons.

The bold departure from the past needs to be placed in its historical context. With the passage of the PAA, Queensland became the first state in Australia to expressly protect the right to engage in a peaceful assembly. Before its passage, the right to engage in protest and freedom of speech were not positive legal rights. Rather, consistent with traditional English constitutional principles, civil and political freedoms were residual liberties. As the celebrated 19<sup>th</sup> century constitutional lawyer AV Dicey proclaimed, under common law systems like England, individuals were free to assemble and process on the highways, exercising the cherished liberties of the common law to 'pass and repass'. The enjoyment of such civil liberties was not dependent on being enshrined in a constitution or statute, and could be enjoyed freely by any citizen, individually or in assemblies, provided that no other laws of the land were violated. As Brennan catalogues in his book, the problem with this classical liberal model is that there is no shortage of laws that fetter protests: the expansion of police summary offences and traffic regulations in the 20<sup>th</sup> century has extensively interfered with these freedoms. Parliament was not alone responsible for this diminishing residue of liberty: as numerous commentators have pointed out, the courts and the common law were not always conducive to liberty either. The 20<sup>th</sup> century saw a judicial expansion of breach of the peace powers, encouraging increased police reliance on these broad and discretionary powers. Indeed, through the latter half of the 20<sup>th</sup> century, courts in the United Kingdom and Australia progressively expanded the scope of common law powers to use force to prevent disorder.<sup>9</sup>

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<sup>9</sup> See generally R. Douglas, *Dealing with Demonstrations: The Law of Public Protest and its Enforcement* (Federation Press, 2004).

This included the power of the police to impose ‘prior restraint’ upon the peaceful conduct of protestors on the ground that their conduct was reasonably believed to be likely to provoke an imminent breach of the peace by others. The reasonableness of the police officers’ belief on the grounds that disorder was ‘imminent’ was rarely (if ever) challenged in the courts. In the 1980s, the increasing challenges to conservative political authority in the United Kingdom and Australia were often met with forceful police responses, resulting in violent clashes between police and protestors.<sup>10</sup>

Against this broader backdrop, the PAA was a clear departure from prevailing liberal models of political freedom. In the absence of any national, constitutionally entrenched Bill of Rights, the PAA was also an expression of the importance of the honouring Australia’s obligations under the ICCPR. Indeed at the time of the enactment of PAA, the ongoing debate about whether value of such constitutional reform left Australia as one of the few common law systems that lacked a Bill of Rights. The Bill of Rights debate at the national level had stalled by the mid 1990s. Indeed, more than a decade would pass before another Australian jurisdiction would enact legislation protecting the rights to freedom of expression and public assembly. The Australian Capital Territory and Victoria enacted general human rights legislation in 2004 and 2006 respectively.<sup>11</sup> These Acts followed the model adopted in the *Human Rights Act 1998* (UK) (HRA),<sup>12</sup> which had been introduced by New Labour as part of its package of ‘constitutional modernisation’; the HRA was said to be ‘bringing home’ the European Convention of Human Rights (ECHR). Equivalent legislation in the Australian Capital Territory and Victoria gave similar effect to the ICCPR, and following the structure of Covenant, contained sections that protected both the right to freedom of expression (Art. 19) and peaceful assembly (Art. 21). These rights were not absolute, for example, the right to peaceful assembly could be subject to restrictions ‘necessary in a democratic society in the interests of

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<sup>10</sup> K. Ewing and C. Gearty, *Freedom under Thatcher: Civil liberties in modern Britain* (Clarendon Press, 1990).

<sup>11</sup> See H. Fenwick, *Civil liberties and human rights* (Routledge, 2007).

<sup>12</sup> Sections 15 and 16 of the *Human Rights Act 2004* (ACT) and *Charter of Human Rights and Responsibilities Act 2006* (Vic), respectively.

national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others' (Art. 21(2)).

Prior to its enactment, there was little the Australian Constitution could offer to shore up the political freedom in Australia: the High Court, through a line of decisions in the 1990s, had recognised an implied constitutional freedom of political communication. Although this provided some measure of protection to public protest,<sup>13</sup> there remained doubts about the scope and limits of the doctrine and the extent of protection for citizens participating in peaceful public protests and demonstrations.<sup>14</sup>

### **G20 Special Legislation: Security, Safety and Combating Civil Disobedience**

The clashes and mass arrests associated with previous G20 protests in Toronto and London were vivid reminders of what was at stake for protesters and police alike. In Toronto in 2010, around 10,000 people attended the main protest. The police were poorly prepared for the weight of such numbers and attracted significant criticism for heavy-handed interventions and, further, for using a little-known security regulation, enacted to counter saboteurs in the Second World War, to arbitrarily stop and search individuals within specified protest areas. Though few injuries were reported, there was widespread damage caused to the city and the police arrested over 1,100 people. Around 75% of this number was subsequently released without charge (having been detained for over 24 hours) and, of those charged, only 32 people were eventually convicted. Similar scenes were seen during the G20 Summit held in London in 2009. Approximately 35,000 people attended peaceful demonstrations ahead of the summit. Yet sporadic disorder broke out in protests on the April 1st and 2nd, attended by

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<sup>13</sup> See *Levy v Victoria* [1997] HCA 31, where the High Court held that protester activity aimed at disrupting duck hunters constituted a form of political communication, with the effect that any interference in this activity by the State regulation could impinge upon the implied constitutional freedom. However, the implied freedom was not absolute: as the High Court recognised, the regulation served the valid objective of ensuring the safety of protestors likely to be present in the vicinity of duck shooting at the opening of the season.

<sup>14</sup> See S Bronitt and G Williams, "Political Freedom as an Outlaw: Republican Theory and Political Protest" (1996) 18(2) *Adelaide Law Review* 289.

some 7,000 protesters, that were much more dynamic and fast-moving. It was in the midst of such protests that a newspaper seller, Ian Tomlinson, was struck and killed by a police officer. In the aftermath of the London protests, the Metropolitan Police were served with numerous civil lawsuits alleging - amongst other things - inappropriate use of force, wrongful arrest and wrongful deprivation of liberty. In one case, the police arrested 66 protesters after raiding a building being used by a group of protesters: the Metropolitan Police eventually paid out £3,500 (approximately AU\$6,000) in compensation to those arrested in relation to claims of false imprisonment and arrest. In both Toronto and London, significant numbers of police officers operating in public order policing chose to conceal or remove their badge numbers, severely impeding individual accountability. Police forces were also quick to resort to the use of blanket indiscriminate measures - such as 'kettling' large groups of protesters within a police cordon, often for hours - which in turn attracted public opprobrium for the indiscriminate and heavy-handed nature of the tactic.<sup>15</sup> The tactic however is not unlawful - in 2012, a decade long legal challenge in the UK to the use of 'kettling' by police failed, with the majority (14:3) of the European Court of Human Rights ultimately ruling that the tactic was not incompatible with the right to peaceful protest under the Convention.<sup>16</sup>

The impact of the excesses of policing during these events was exacerbated by the considerable amount of video footage recorded by witnesses. It is important to remember that we live now in an era of surveillance: technological advances provide law enforcement officials with easy access to ubiquitous CCTV in public and private spaces, but it also places mobile recording devices in the hands of everyday citizens. These trends have, as Andrew Goldsmith points out, created a new level of visibility for policing.<sup>17</sup> You do not have to delve too far into social media to see videos taken by protesters in London and Toronto alleging

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<sup>15</sup> 'Kettling' is widely-employed by UK police to manage public disorder. Cordons of police officers are arranged to encircle large groups of protesters (comprised of both peaceful and disorderly elements) to prevent their movement, often for several hours.

<sup>16</sup> *Austin & Others v UK (Applications Nos. 39692/09, 40713/09 and 41008/09)* (15 March 2012). For an excellent overview of the case, see

<http://www.theguardian.com/uk/2012/mar/15/human-rights-court-police-kettling>.

<sup>17</sup> A Goldsmith, "Policing's New Visibility" (2010), 50(5), *British Journal of Criminology* 914.

excessive use of force by police at those protests. Increasingly the behaviour of police is not only on immediate display, but can be made a matter of permanent historical public record on the Internet. The way in which the public perceives the police's management of protests goes some way to supporting or eroding public confidence in their abilities. Indeed, it is perfectly possible for police officers to act within their legal powers, but nevertheless lose the public's confidence. We saw with the death of Ian Tomlinson in the midst of the London G20 protests that it takes just one or two baton strikes to undermine the public's confidence in its police service. So the stakes are high: perhaps the most treasured asset of any police force is the confidence the public has in its ability to operate lawfully, with restraint and with demonstrable fairness.

#### *The G20 Safety and Security Act*

Against the fraught backdrop of previous G20 protests, the history of repression of protest in Queensland was bound to have an impact on the strategy adopted for policing the G20 event. Clearly, the rights to engage in peaceful protest were not at the forefront of the government or legislature's concerns in drafting its special legislation. Rather as the title of the Act indicated, the overriding policy objective of the *G20 Safety and Security Act 2013* (Qld) was to promote the safety and security of those attending the event.<sup>18</sup> As is increasingly common for mega-events, special legislation was passed setting out the policing and security arrangements, creating new powers that only apply for a specific place and duration. Most significantly, the G20 Act suspended the operation of the PAA in declared security areas, which did not bode well for the safety and security of protestors' rights!

Reading the G20 Act, readers will be struck by the absence of any express reference to Australia's obligation to respect the fundamental civil and political

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<sup>18</sup> The Long Title of the G20 Act reflects this policy focus: "An Act to provide for the safety and security of persons attending the Group of Twenty leaders' summit in Brisbane in 2014 and other related meetings and events in Queensland in 2014, to ensure the safety of members of the community and to protect property during the hosting of the summit and other related meetings".

rights of protestors. Section 2 of the G20 Act proclaims the primacy of its safety and security rationale:

The objectives of this Act are to provide police officers, non-State police officers and appointed persons with special powers—

- (a) to promote the safety and security of persons attending any part of the G20 meeting ...
- (b) to ensure the safety of members of the public from acts of civil disobedience in relation to any part of the G20 meeting; and
- (c) to protect property from damage from civil disobedience in relation to any part of the G20 meeting; and
- (d) to prevent acts of terrorism directly or indirectly related to any part of the G20 meeting; and
- (e) to regulate traffic and pedestrian movement to ensure the passage of motorcades related to any part of the G20 meeting is not impeded.

Protestors were not conceived as legitimate rights-holders, but rather potential law-breakers engaged in acts of ‘civil disobedience’. Significantly, this was the only occasion in the G20 Act that ‘civil disobedience’ was mentioned, and terms like peaceful protest or lawful assembly are never mentioned. At the outset, the G20 Act raised concern about its potential draconian reach – indeed, much of the early critical media commentary focused on the long, and almost comically exhaustive, list of prohibited items that could not be brought into declared areas adjacent to the G20 venues, including weapons, handcuffs, whips, kites, blowpipes, reptiles and insects, kayaks, eggs, tin cans and much else besides. Of particular concern, was the prohibited status of placards larger than a prescribed size or amplification equipment (i.e. loudhailers). The legislation did not make possession an arrestable offence per se, but there was an onus on those found in possession of these articles to establish a “reasonable excuse” for possession.

### **Policing the Protests: Affirming the Dialogue Model**

The importance of ensuring that individuals have an “equality of protest opportunity” is a new policing responsibility in the 21st century. In a public presentation prior to the enactment of the G20 Act, one of the authors echoed a recommendation by a UK policing authority that police employ a ‘no surprises communication philosophy with protesters’ (Her Majesty’s Inspectorate of

Constabulary, Adapting to Protest - Nurturing the British Model of Policing', 25th November 2009) and urged the QPS to 'open up a dialogue with protesters at any and every opportunity'. These were not especially prescient insights, but rather were merely observations derived from the origins of modern policing and research around effective policing at large events. Policing scholars have widely endorsed dialogue, engagement and liaison in police management of protests,<sup>19</sup> with a growing body of research establishing that police liaison with protest groups broadens the opportunity for 'problem solving, conflict reduction, limit setting, and mediating'<sup>20</sup> in large scale protests. Much of the criticism leveled at the policing operations undertaken in the London and Toronto G20 summits focused on the excessive use of force and the failure of police commanders to engage in meaningful dialogue with protest groups as a first resort.

In the months leading up to the G20 meetings in Cairns and Brisbane, the spectre of violent protests seen in London and Toronto dominated media coverage via two key themes. The first theme clearly signalled the militaristic defences of the pending security operation. For example, 'Brisbane set to go into lockdown for G20' reported one outlet, detailing plans for 'military-style checkpoints'<sup>21</sup>, while another proclaimed 'Brisbane's G20 fortress emerges'<sup>22</sup>. In at least one instance, the military nature of the security operation was elided with the protests: 'Snipers in position for G20 as new threat emerges', announced the Courier Mail on the morning of the G20 summit. An alarming headline indeed; yet, reading further into the story reveals the headline to be misleading. The 'snipers in position' were part of a long-planned security strategy and entirely unconnected to the 'new threat', which turned out to be from the non-violent 'hacktivist' protest group 'Anonymous'. The second theme, which drew extensively on

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<sup>19</sup> J. Gravelle and C. Rogers, 'Policing public protests and corporate social responsibility', *International Journal of Law, Crime and Justice*, 39 (2011), pp. 111-120.

<sup>20</sup> C. Stott, M. Scothern and H. Gorringer, 'Advances in Liaison Based Public Order Policing in England: Human Rights and Negotiating the Management of Protest?', *Policing*, 7 (2013), pp. 212-226.

<sup>21</sup> News Corp Australia, 7<sup>th</sup> November 2014. Taken from <http://www.news.com.au/national/breaking-news/brisbane-set-to-go-into-lockdown-for-g20/story-e6frfku9-1227115774753>, accessed 3<sup>rd</sup> December 2014

<sup>22</sup> The Brisbane Times, 11<sup>th</sup> November 2014. Taken from <http://www.brisbanetimes.com.au/it-pro/brisbanes-g20-fortress-emerges-20141111-11kek7.html>, accessed 3<sup>rd</sup> December 2014

dramatic and eye-catching images, focused on the prospect of chaos wrought by the so-called 'Black Bloc'<sup>23</sup>, anarchists and other anti-establishment groups. Headlines presented possible scenarios of chaotic protests: 'Black Bloc tactics aim for Brisbane G20 shock and awe'; 'Anarchy group threatens G20'<sup>24</sup>; 'Terror and riots twin threat at Brisbane summit'<sup>25</sup>; 'State of Anarchy: Policing Queensland for the G20'.<sup>26</sup>

Together, these 'militaristic' and the 'anarchistic' media themes generated expectations of a violent confrontation between violent lawless protesters on one side, and well-equipped security forces on the other. The combined effect of this discourse was to portend a hostile protest environment, one that was highly dissuasive to those considering voicing their legitimate and peaceful dissent. As we know, the reality of the protests was far removed from these imagined scenarios. In the midst of stifling heat, around 2000 people participated in protests almost entirely devoid of disruption. Groups advocating action on climate change, indigenous rights, labour reform, and so on, protested peacefully with none of the anticipated 'anarchism' in Brisbane's 'fortress'.

In truth, neither the temporary suspension of the PPA, nor the tattoo of media-led war-drums, nor the potential breadth of the police powers granted by the G20 Act had much impact on the policing strategy that was employed. Assistant Commissioner Katarina Carroll has publicly outlined the strategic and logistical issues faced in 'Operation Southern Cross'. Elaborating on these challenges in a public lecture titled 'G20:20 Hindsight',<sup>27</sup> delivered shortly after the conclusion

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<sup>23</sup> Contrary to many of the media's depictions, the 'Black Bloc' is not a distinctive protest group or social movement, but a tactic employed by protesters to evade identification.

<sup>24</sup> 4BC Radio, 9<sup>th</sup> December 2013. Taken from <http://www.4bc.com.au/blogs/2013-4bc-mornings-audio-blog/anarchy-group-threatens-g20/20131209-2z0vm.html#.VITenaSUfYk>, accessed 28<sup>th</sup> November 2014

<sup>25</sup> The Courier Mail, 22<sup>nd</sup> July 2014. See <http://www.couriermail.com.au/news/queensland/terror-and-riots-twin-threat-at-brisbane-summit-says-top-g20-cop/story-fnihsrf2-1226996715096>, accessed 28<sup>th</sup> November 2014

<sup>26</sup> The Brisbane Times, 14<sup>th</sup> August 2014. See <http://www.brisbanetimes.com.au/it-pro/state-of-anarchy-policing-queensland-for-the-g20-20140813-103un4.html>, accessed 29<sup>th</sup> November 2014

<sup>27</sup> The public lecture was hosted by the Australian Research Council Centre of Excellence in Policing and Security at the Queensland Cricketers' Club (1 December 2014). Further

of the G20, Assistant Commissioner Carroll reflected on scale of the challenge of communicating the 'right' message across such a diverse force under QPS command:

Whilst the tone and strategy was set at the (top), the challenge was to ensure that all 6,400 police from 8 jurisdictions also shared our intent/understanding of our legislation, our policy and our philosophy.<sup>28</sup>

To address this challenge, the ensuing policing strategy undertook two elements that are instructive, in our view, for modern public order policing. The first element addressed the challenge of temporarily integrating officers from disparate commands into one G20 policing operation, one of the largest in Australia's history, involving 6400 police were drawn from across Australia, and New Zealand. In the planning phase of the G20, the QPS consulted heavily with police commanders involved in the management of the protests in London and Toronto in an effort to learn lessons and best-practices from those experiences. They also developed special training and briefing products provided to all G20 police officers. The starting philosophy for general duties policing was contained in an Aide Memoire provided to G20 officers:

#### **Human Rights**

Officers are reminded of their obligations with respect to human rights such as:

- Free Speech
- Safety from Violence
- To Peacefully protest (speak against) a government or group
- The right to express oneself.

This 'front and square' human rights philosophy was echoed in a compulsory online training platform for all police officers - the 'G20 Safety and Security Online Learning Product' - which spanned, inter alia, lessons arising from London and Toronto police experiences, the facilitation of lawful protests, ethical

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clarifications of the QPS strategy and points raised in her speech were obtained by subsequent correspondence with the Assistant Commissioner.

<sup>28</sup> Personal email communication with Asst. Comm. Carroll, 12<sup>th</sup> December 2014.

and professional conduct, human rights, and police integrity.<sup>29</sup> Officers additionally received a 'G20 Policy and Procedures Manual' specifying common policing protocols to be employed by G20 police during the Summit. The common policing philosophy and protocols were reinforced during the G20 policing deployment in an 'Executive Welcome' and 'Professional Standards briefing'. The policing philosophy, and its core message, comports with our view that, irrespective of the noise and discomfort caused by protest messages – including those directed at the police for their role in the stolen generation, police shootings and Aboriginal deaths in custody – police are bound to uphold the human rights of everyone. Indeed, the human rights model of policing suggests that police intervention is needed as much to ensure that the rights of the less vocal, and more vulnerable, protest groups are not drowned out or trampled upon: indeed, this would be literally the case in relation to the Free Tibet protestors who staged a poignant silent 'die-in' protest at the G20 Summit in Brisbane.

The second element of the QPS policing strategy drew on lessons learned from the failure of policing agencies in London and Toronto to properly engage with protest groups prior to the planned demonstrations. In the months leading up to the G20 Summit, the QPS sought to engage with 'issue motivated groups' to open up dialogue, foster mutual trust between protesters and police and promote understanding of protesters' rights and responsibilities and the police's role during protests, specifically the role of police negotiators throughout the event worked extensively and closely with protestors and police commanders on the ground.<sup>30</sup> This emphasis on early and meaningful communication with protest groups, irrespective of their politics, stands out as the crucial plank in the policing strategy. Contact with protest groups was sought and clear lines of communication established around the planning for the event. As Assistant Commissioner Carroll reflected in her 'G20:20 Hindsight' speech:

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<sup>29</sup> Ibid.

<sup>30</sup> Moreover, to prepare the local communities most heavily affected by the G20, a QPS engagement team was established to speak with residents, businesses and community groups via several 'G20 community information forums' in the lead-up to the summit.

The engagement and the communication with the protest groups commenced early, it was meaningful and it was genuine. We will always support people's fundamental right of expression and peaceful assembly. We even facilitate it.<sup>31</sup>

By the time of the summit, around 26 groups had been in contact with the QPS to liaise on their protest plans. The result, which may well have been exaggerated by the relatively low number of protesters, was one that served the interests of all: the peaceful articulation of political dissent. Over the weekend of the summit, just sixteen individuals were arrested, mostly for minor offences unconnected to protesting, and the police issued 27 exclusion notices. That the QPS preferred diplomacy and early liaison with the public to the heavy powers provided by the G20 Act is a reminder that security and safety can be achieved by public consent, rather than police compulsion. It is also true to point out that such diplomacy runs true to some of the founding precepts of policing in liberal democracies, codified in Peel's Principles of Policing, which in 1829 enjoined newly formed professional police thus: 'To use physical force only when the exercise of persuasion, advice and warning is found to be insufficient to obtain public co-operation to an extent necessary to secure observance of law or to restore order'. Such approaches reinforce the importance of 'policing by consent' in liberal democracies and the manner in which these were operationalized in the G20 protests are an affirmation of the continued relevance of Peel's principles to modern policing.

## **Conclusion**

The challenge for policing is often presented in public policy terms as a balancing act, between, on the one hand, the civil and political rights of protestors and, on the other hand, the safety and security of others members of the community. The quest for "balance" in our legal system provides an attractive optic for politicians introducing laws, and it has infused across public order and many other fields of law. Terrorism in particular has generated a substantial body of commentary on

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<sup>31</sup> Assistant Commissioner Katerina Carroll, 'G20/20 Hindsight'. The ARC Centre of Excellence in Policing and Security Public Lecture, The Queensland Cricketers' Club, Brisbane. 1st December 2014.

the challenge of the executive, legislature and judiciary striking the right balance between liberty and security, including whether balancing should be applied as the appropriate model to guide the exercise of executive or judicial discretion, or more broadly, the future of law reform.<sup>32</sup>

The balancing debate resonates with earlier debates in criminal justice. Herbert Packer in the 1960s presented the criminal justice system as a conflict between two models: “crime control” versus “due process”. In his influential account, Packer observed that crime control model aimed to promote public order and secure convictions, a responsibility that rested primarily on the shoulders of the police. Due process, on the other hand, aimed to control state power and uphold the rights of individuals suspected of serious crime, a responsibility that rests on shoulders of the judges and courts. In Packer’s battle model, an “assembly line” of crime control is confronted with the “obstacle course” of due process. As a conceptual framework, this binary model has intuitive appeal to policymakers and politicians alike, though it has generated substantial critiques. The most significant, by Doreen McBarnet, maintains that due process does not invariably impede crime control - when legal protections are subject to further empirical scrutiny, their impact on practice may be negligible or indeed, may in fact be conducive to conviction! Indeed, as McBarnet pointed out in her research on summary criminal processes, in many instances, “due process is for crime control”.<sup>33</sup>

Applying a sociolegal theoretical lens to the G20 widens our perspective on the policy debate. The ‘law in the books’ (viz., the G20 Act) did absolutely nothing to uphold the rights of lawful and peaceful protest – indeed, the suspension of the PAA was symbolic of just how far the safety and security rationale of the G20 Act

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<sup>32</sup> These themes are explored in S Bronitt, “Balancing Liberty and Security: Critical Perspectives on Terrorism Law Reform” in M Gani and P Mathew (eds), *Fresh Perspectives on the ‘War on Terror’* (2008), Ch 5; and an earlier essay S Bronitt, “Constitutional Rhetoric v Criminal Justice Realities: Unbalanced Responses to Terrorism?” (2003) 14 *Public Law Review* 76.

<sup>33</sup> For an excellent review essay exposing these limits, see J Stribopoulos, “Packer’s Blind Spot: Low Visibility Encounters and the Limits of Due Process vs. Crime Control” in F Tanguay-Renaud & J Stribopoulos eds, *Rethinking Criminal Law Theory: New Canadian Perspectives in the Philosophy Of Domestic, Transnational and International Criminal Law*, (Oxford: Hart Publishing, 2012).

justified this extensive (albeit temporary) derogation from the legal protection accorded to peaceful protests. By contrast, the 'law in action' (viz., policing policy and practice) required frontline police to operationalize their broad powers cognisant of their vital role in promoting human rights for everyone – to ensure the protection of both public safety and human rights. The dialogue model of policing promoted extensively by the Assistant Commissioner, Katarina Carroll of the QPS, asserted the legitimacy of protestors' rights to engage in peaceful protest, and that there was an obligation of police to negotiate compliance with the Act in a fair and transparent manner. This leadership tone is undoubtedly a significant part of the success of the Operation Southern Cross. It is hoped that the review of the G20 Act required within the next 6 months can learn lessons from the innovative policing strategies deployed, and that future mega-event legislation, can take human rights more seriously. The concern that there was 'Too Much Order and Too Little Law' did not manifest as *the* problem at G20; indeed, there was no shortage of law defining police powers – the problem was that the G20 Act failed to recognise anywhere the fundamental importance and legitimacy of peaceful protest. The G20 summit may be viewed as a lesson in how far policing in Queensland, and its leadership, has come since the 'Joh years'. It is hoped that our current political leaders and legislators can learn a similar lesson, and do not hesitate to embed respect for fundamental human rights into future mega events legislation such as forthcoming Commonwealth Games on the Gold Coast. If the police can learn this critical lesson that promoting due process, diplomacy and fundamental human rights can be conducive rather than inimical to crime control and public order, surely our legislators and policy makers can do the same.