The “Decade of Dissent” in Australian Parliamentary Discourse, 1975-2007
Dr. Evan Smith

With Australia’s political and legal systems inherited from Britain, many of the rights assumed under the principles of liberal democracy are implicitly upheld through common law and the Australian Constitution, rather than explicitly defined like the Bill of Rights in the United States. This reliance on common law as the basis for Australian law-making has, in the twenty-first century, seen many push for an Australian Bill of Rights, with Prime Minister Kevin Rudd establishing an inquiry, led by Father Frank Brennan, into whether a human rights charter could be created for Australia. One of the tenets of liberal democracy that could be dramatically altered under a federal human rights charter is the freedom of political expression and right to protest. Although the Australian Constitution makes no explicit mention of the right to protest (it is implied as a freedom of political communication with many limitations), the right of peaceful assembly (and the right of peaceful political expression) is internationally recognised as a fundamental democratic right, ‘protected’ under Article 21 of the International Covenant of Civil and Political Rights. However the right to protest often comes into conflict with other tenets of liberal democracy, primarily the rule of law, with Australian history demonstrating many examples of clashes between political protests and the authorities.

Canberra, as the home of Federal Parliament since 1927, has been a focal point for demonstrations and other forms of political protest, primarily on the lawns outside Parliament House (and Old Parliament House), but also extending to diplomatic embassies and other areas. Since the political and cultural radicalism of the late 1960s and early 1970s, what Greg Langley called the ‘decade of dissent’, protests have become a particularly controversial (and highly emotive) part of political life in Canberra, with the Government attempting to strike a balance between the public’s right to political expression and the maintenance of law and order. My project explores how the Australian Government, from the Fraser era to the Howard era, have reacted to protest in the capital and the practical ways it has been dealt with, in terms of policing, legislation and public portrayal. The project investigates how previous protests and demonstrations have informed how the Government has dealt with subsequent protests, especially looking at how the ‘memory’ of certain episodes has influenced the decision-making process in reacting to contemporary events.

My time as an APMC Fellow in January 2010 was spent at the Australian Prime Ministers Centre (APMC), Museum of Australian Democracy at Old Parliament House in Canberra. This allowed me to conduct primary research at several institutions within Canberra, primarily the APMC, the National Archives and the National Library. Alongside a wealth of secondary literature, there were three areas of primary documents that were valuable to my research in Canberra:

2 Katharine Gelber, ‘The Right to Protest in Australian Political Culture’, presented at the Australian Political Studies Association Annual Conference, Macquarie University, Sydney (28-30 September, 2009)
3 For example, see: Verity Burgman, Power and Protest: Movements for Change in Australian Society (St Leonards, NSW, 1993); Rick Kuhn (ed.), Class and Struggle in Australia (Sydney, 2005);
4 Greg Langley, A Decade of Dissent: Vietnam and the Conflict on the Australian Homefront (Sydney, 1992).
Parliamentary Debates (Hansard): House of Representatives/Senate

Vital to my research was an examination of the parliamentary discourse on protest and demonstrations over the last 40 years. The APMC is one of the few institutions with a complete set of Hansard for both houses of Parliament from 1901 to 1988 on open shelf, which proved to be a very important source. Beginning with the debate over the Public Order Bill in 1970, I was able to trace the debate in Federal Parliament on policing demonstrations and the right to protest through numerous Governments, from the height of the anti-Vietnam War and anti-apartheid movements in the early 1970s to the peace, anti-uranium and women’s movements in the 1980s. The transcript of Parliamentary debates from 1988 to the present are now online, available through the Parliament of Australia website, which has allowed me to take my research up to protest issues in more recent times, such as demonstrations at AIDEX in 1991, the trade union movement against the Howard Government and the environmental movement.

Archival Documents

While Hansard was able to provide the ‘official’ and public discourses on demonstrations and protest issues, I was also interested in exploring the ‘behind the scenes’ discussions and the private decision-making processes surrounding these issues. Over the last ten years, the National Archives of Australia have released a number of official documents from the McMahon, Whitlam and Fraser eras, with several documents relating to protest and demonstration issues, which have been very helpful in my research. These documents have included briefing documents on security at Old Parliament House, the Aboriginal Tent Embassy, particular movements, groups and individuals, and political violence in Australia. One of the most valuable documents for my research from the National Archives is the classified version of the Protective Security Review Report by Mr Justice Hope, which was originally drafted in 1979 and recently released under the 30 years rule. 5

The Inquiry into the Right to Protest

In late 1994, the Deputy Prime Minister Brian Howe established an inquiry into ‘[t]he right to legitimately protest or demonstrate on national land and in the parliamentary zone in particular’, 6 to be conducted by the Joint Standing Committee on the National Capital and External Territories. Between April 1995 and December 1996, the Joint Standing Committee received numerous submissions and heard testimony from various institutions, organisations and individuals on the issue of the right to protest, with a final report (including recommendations) published in 1997. The National Library of Australia holds bound copies of all of the submissions received by the Committee and the transcripts of all testimony heard, which provided a significant insight into the discussion on protest and demonstration issues. These submissions and testimony also provide an understanding of the many competing interests that need to be taken into consideration in the ways that the Government (and other institutions such as the police) handles demonstrations and other forms of protest.

From analysing these primary sources, as well as many others, I have been able to identify certain themes in the history of protest in contemporary Australia and government responses to it. These are:

The hierarchy of rights – the right to protest v the rule of law
One of the recurring debates that I have uncovered in my research is the juxtaposition of the right to protest with law and order concerns. Nearly all those involved in the debate, in Parliament, in the Joint Standing Committee, in the judicial system and the wider public, agree that the freedom of political expression and the right to protest is an integral part of modern democracy, but it is often combined with limitations upon this right – the caveat that all protests must be ‘peaceful’ and protestors must obey the ‘rule of law’ is often stipulated. In his introduction of the Public Order Bill in 1971, the then Attorney General Thomas Eyre Hughes stated, ‘Calls in support of the right to dissent must be heeded, but they must not be allowed to deteriorate into attacks upon the rights and proper liberties of other people’. The same sentiment carries through the discourse until the present, with the 1997 report by the Joint Standing Committee declaring, ‘A paramount obligation is to ensure that the right to protest on national land is exercised with due regard to public safety and public order’. Any violent, or even disruptive, activities are nearly always condemned by the Government, with many protestors portrayed as subversive or deviant. Liberal MP Billy Snedden famously referred to the organisers of the Vietnam Moratorium Campaign in 1970 as ‘political bikies who pack rape democracy’, while John Howard described anti-globalisation protestors in 2006 as ‘a hardcore of violent people who do not represent even the mainstream of people who oppose the policies of this Government’. But there have been changes in opinion over the kind of activities undertaken by protestors. In the early 1970s, the ‘sit-in’ was criticised by both Liberal and Labor politicians, but nowadays this tactic is viewed as a relatively peaceful action, seemingly preferred to acts of ‘vandalism’, such as smashing windows, which is often highlighted by politicians and the press in their reports on demonstrations.

The space of protest
Since the 1960s, the Government has recognised that Canberra, as the location of Federal Parliament, is a popular spot for demonstrations and other forms of protest, with both Parliament Houses having particular symbolic value for political actions. But there has been a continual debate over what spaces should be available for public protest and how access to this space should be administered by the authorities. A general consensus has been formed that the lawned areas outside Old Parliament House and Parliament House should be available for short-term, peaceful demonstrations (with temporary structures), which must not interfere with government functions, tourism or roadways, although this is subject to various restrictions by the Federal Government, the ACT Government and the police. Kurt Iveson has argued that this limits protests to the realm of ‘symbolic’ action, rather than direct action, as ‘[p]rotests at Parliament House which attempt to put claims directly to other members of the public entering the building, or to politicians (all of whom use entrances where protest is forbidden) are prohibited’. However the process of legitimisation of protest activities in public space can change. The Aboriginal Tent Embassy, established on the lawns outside Old Parliament House in January 1972, was originally perceived by

---

8 Joint Standing Committee, A Right to Protest, p. xv.
the Government as an illegitimate site of protest and eventually dismantled by the authorities, but since the mid-1990s has been recognised as ‘a site representing political struggle for all Aboriginal and Torres Strait Islander people’ and a place of ‘significance for the local Aboriginal community’ as a traditional ‘meeting and gathering ground’.

**Policing methods**

There has been a significant amount of material written on the shifts in methods used in policing demonstrations and scenes of public disorder in Australia over the last thirty years, as protest movements and policing techniques both change. Rather than the straightforward confrontation between protestors and the police during the 1970s and 1980s, since the 1990s, policing methods have focused on containing protest activities, surveillance and the denial of space for protest. The police also encourage negotiation between the authorities and protest organisers over the boundaries of the protest and protest actions. As an outcome of the Joint Standing Committee’s 1997 report, the National Capital Authority published guidelines for protest organisers in Canberra stating that while formal approval is not required to conduct a protest or demonstration in the ACT, ‘it may be in your interests if you are planning a protest or demonstration to discuss your plans with the relevant authorities’. Although I have uncovered in my research that there is a problem in identifying who the relevant authorities are, as the laws and policing of the ACT fall under both federal and local jurisdiction, which has provided many difficulties in the history of policing protest in Canberra.

**National security concerns**

Since the 1970s, there has been a concern amongst many within the Government and other state institutions that demonstrations and other forms of protest have the potential to become threats to national security, particularly the transition from peaceful demonstration to acts of political violence. For example, in 1979, Mr Justice Hope warned of ‘domestic’ political violence that ‘sometimes arises out of public demonstrations’, often from a ‘confrontation between citizens and the police’. A continual concern for protestors and civil libertarians has been how the authorities have viewed the policing of protests and national security/counter-terrorism concerns as interlinked concepts. As Jenny Hocking, Andrew Lynch and George Williams (amongst many others) have argued, recent counter-terrorism legislation introduced by the Howard Government after 9/11 has had the potential to define forms of public protest as ‘terrorism’, which are subject to extraordinary police powers and penalties.

My preliminary conclusion is that since the 1970s, the issue of protest in Canberra has been continually negotiated by the Federal Government in both theoretical and practical terms, with particular reference to historical precedents, such as the experience of widespread protests during the 1960s and 1970s compared with contemporary protest movements, and modern challenges, such as changing policing techniques and the newly developed counter-terrorism measures. The relationship

---


between the right to protest and the rule of law is continually debated in Australian politics, but certain themes, outlined above, can be uncovered from the history of protest in modern Australian political history.

Other avenues and further analysis are still to be explored. I am looking to visit the Malcolm Fraser Collection at the University of Melbourne and the Bob Hawke Prime Ministerial Library at the University of South Australia over the next few months to collect more data. I have submitted an abstract for a paper to be presented at the Australian Political Science Association Annual Conference in Melbourne in September 2010, which I hope to hear will be accepted soon, and I am currently working on a journal article on this project that should be ready to submit to prospective journals by the end of the year. In the future, I would like to extend this project to compare the history of protest and government responses in Australia and Britain.

Dr Evan Smith is a Teaching Assistant with the History Department, Flinders University of South Australia. He recently completed his PhD on the Communist Party of Great Britain.

April 2010