

*Public Order and the Law*, by Andrew Hiller, Sydney, The Law Book Company Limited, 1983, x + 230 pp. (including index). \$19.50 (limp).

Although we speak glibly of our "rights" in a free society, it remains true that our civil liberties are residual. Our freedom to protest and demonstrate is measured by subtracting the many restraints which the law imposes. To this equation must be added the indefinite factor of discretion in the enforcement of the law and maintenance of public order. Ascertaining the law is no easy task. Andrew Hiller's book, *Public Order and the Law*, is therefore to be welcomed. It brings together a diversity of laws which impinge on our freedom to engage in expressive activity. It also includes chapters examining, among other things, firearms legislation, hijacking, international terrorism and the call-out of the Defence Force. It comes as no surprise to the common lawyer to find the peaceful protestor, the vandal, the drunk and the terrorist all dealt with under the same general title. Our law places no premium on the "right" to protest and demonstrate. Its thrust is to maintain public order. Mr. Hiller's book is a reminder of this.

Unfortunately, Mr. Hiller does not tackle the critical question of *why* the political protestor should have to ascertain the extent of his or her freedoms from the body of public order laws. He gives cursory treatment to the status of civil liberties in our society. The opening words of the book assert *rights* of peaceful assembly and free speech, but the difference between guaranteed rights and a balancing approach is not explored. Another issue which calls for closer scrutiny than the author gives it, is discretion. Our freedoms depend as much (if not more) on the discretion of police, prosecutor and adjudicator, as they do on the letter of the law. While Mr. Hiller does canvass techniques of crowd control, the reader is given scant insight into the nature and exercise of police discretion. Nor is the accountability (or non-accountability) of the police to their superiors, the government and the courts, scrutinised.

The book is divided into five parts. The first three parts — comprising the bulk of the book — deal with laws which have particular relevance to those concerned with protest and demonstrations. By collecting together these public order laws of the Australian States and New Zealand, Mr. Hiller provides us with a useful reference book. Moreover, the mere collection of these materials is a statement in itself of the extent to which, and the ways in which, our freedoms of speech and assembly may be curtailed. Unfortunately, the A.C.T. and Northern Territory are neglected despite the instructive material they provide. So also are some areas of the common law — for example, nuisance.

Part I examines permit and notification systems regulating processions and public assemblies in the States and New Zealand. No background on the permissible use of the highway at common law is provided. Part II deals with unlawful assemblies, riots and proclamations to disperse. It is here that we encounter the well-known binding-over case of *Beatty v. Gillbanks*.<sup>1</sup> However in Part III, when dealing with preventive powers and the offence of obstructing the police in the execution of duty, no further mention is made of *Beatty v. Gillbanks*, nor are binding-over orders

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<sup>1</sup> (1882) 15 Cox C.C. 138; 9 Q.B.D. 308.

discussed. The *Duncan v. Jones*<sup>2</sup> line of cases is documented without exploring its contradiction with the principle established in *Beatty v. Gillbanks*. In 1981, in the case of *Forbutt v. Blake*,<sup>3</sup> the A.C.T. Supreme Court took a stand against *Duncan v. Jones*. It held that disobeying a police order to cease a lawful activity did not constitute the offence of obstructing the police in the execution of duty. If a member of the police force reasonably apprehends a breach of the peace, as a real possibility, the most she or he can do is arrest for the purpose of obtaining a binding-over order. Mr. Hiller does not mention this important Australian case even though his book deals with the law prior to 30 September 1982. Yet another conspicuous omission is the failure to analyse the concept of "a breach of the peace"—a concept central to the preventive powers of the police, as well as to the definition of specific offences, such as unlawful assembly.

Other offences examined in Part III are offensive and disorderly behaviour (including the now repealed N.S.W. offence of causing "serious alarm or serious affront"), obstructing traffic and trespass. The chapter on trespass looks at the general statutory offences in some of the Australian States and New Zealand. The Tasmanian trespass laws, which are not dealt with, were strengthened after the cut-off point for Mr. Hiller's book. Their extensive use in the Franklin Dam blockade reminds us of the utility of the statutory offence from the point of view of the police.

In Part IV, Mr. Hiller looks at "Recent legislation with respect to threats of violence, firearms and dangerous weapons"—at least in N.S.W., Victoria and Queensland. Part V is concerned largely with Commonwealth legislation protecting diplomatic and consular personnel and premises and visiting V.I.P.s. The federal response to highjacking and threats of violence in respect of aircraft and airports is also considered. The final Part, entitled "Military Aid to the Civil Power", looks at the constitutional and statutory basis for a call-out of the Defence Force, as well as the detailed, and sometimes outdated, procedures contained in the Australian Military Regulations. Mr. Hiller documents the 1978 call-out following the Hilton Bombing. Interestingly, this Part contains some comparative material; namely, provisions of the United States Code dealing with civil disorders. It is a pity that comparative material is not used elsewhere in the book for the purpose of highlighting the Anglo-Australian approach to civil liberties and public order.

The main criticism of the book is its mechanical treatment of the law. Granted it serves the purpose of a useful handbook, but the law relating to public order is characterised by discretion, unpredictability and sometimes impatience with our "rights" of assembly and free speech. No one concerned with this area of the law can afford to overlook these characteristics. An aspect of the law's unpredictability is the fluctuating use of offences, and sometimes revival of neglected offences. It is difficult to criticise a book with such a wide brief for not being comprehensive. However, there are some unexplained gaps in the survey of both legislation and common law. The case law, likewise, is slender.

N. E. FRANKLIN\*

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<sup>2</sup> [1936] 1 K.B. 218.

<sup>3</sup> (1981) 51 F.L.R. 465.

\* B.A. LL.B. (Natal), LL.B. Dip.Leg.Stud. (Cantab.), Lecturer in Law, University of Sydney.