

G20 2014 BRISBANE & LESSONS FROM 1971 SPRINGBOK STATE OF EMERGENCY

I want to look at the Springbok State of Emergency through the eyes of a then 20 year old and assess its significance in relation to policing tactics throughout the 1970s and to a lesser extent the 80s in Queensland and then project to next year when the G20 gathering will be held in Brisbane to see what lessons we have learnt in relation to demonstrations and related police tactics in the last 40 years.

Because of the time frame available my review will necessarily be somewhat superficial. The State of Emergency to allow a racially selected Springbok Team to play in Brisbane was made pursuant to Section 22 of the State Transport Act 1938-43 (Qld) which authorised the Cabinet to proclaim a state of emergency where 'at any single time it appears that any circumstances exist or are likely to come into existence within the state... whether by fire, flood, storm, tempest, act of God, or by reason of any other cause or circumstance whatsoever whereby the peace, welfare, order, good government, or the public safety of the state is or is likely to be imperilled'.

The Governor can then make such directions as he deems 'necessary or desirable to secure the peace, welfare, order, good government, and for the public safety of the state'. These include making provisions 'for securing the essentials of life to the people generally, or in any particular case, the securing and regulating of the supply and distribution of food, water, fuel, light'.

In 1971, a limited state of emergency was proclaimed 'for the purpose of conducting a football match' between Australia and South Africa. The use of the Act was criticised as being most inappropriate and the validity of the proclamation was challenged in Court. The challenge failed¹.

It was noted at the time that "perhaps the most odious part of the Qld Act ...is that which purports to take anything done under it out of the purview of the Courts, "and shall not be questioned in any proceedings whatsoever". What has any government, acting bonofide to fear from scrutiny of its actions by the Courts².

¹ See The Australian Quarterly, March 1976 page 29 the case which failed was **Dean v A-G of Qld (1971)** (at page 29 and 41)

² See "The State of Emergency" by R Byrom, Senior Lecturer in Law University of Qld

I became involved as a legal observer for two aspects of the Springbok State of Emergency namely the gathering at the Tower Mill Hotel in Wickham Street on the Thursday night before the Saturday game and at the game by mere happenstance.

In 1971 I was a second year law student. My background was that I was one of 15 children who came from a very catholic and very conservative family. I had been Captain of St Patrick's College in my last year at school in 1968 and my conservatism and 'religiosity' at the time is reflected by the fact that I used to walk around the oval at lunchtime in the month of November ringing a bell so that people could go to the chapel to say the Rosary!

At the time I became involved I was a highly conservative law student, not involved in any form of protest whatsoever. I had two brothers in the police one of whom later rose to become Assistant Commissioner and the other later became the President of the Police Union during the Fitzgerald Inquiry. That brief personal background is relevant to have an understanding of my reaction to the state of emergency.

When the state of emergency was declared the then relatively new premier was Bjelke-Petersen who was premier of Queensland from 1968 to 1987. His first few years in power were undistinguished. He narrowly survived a leadership challenge in 1970, a short time before the Springbok State of Emergency.

In 1971, the South African Rugby Union Football Team, the Springboks, arrived in Australia to play a series of matches. It was the era of apartheid and the team's presence provoked protest throughout the country. The games in Melbourne and Sydney were interrupted with smoke bombs, hundreds of referee-type whistles and demonstrators running onto the field.

Rugby games in Brisbane were, in those days, usually played at Ballymore Oval. The police informed Bjelke-Petersen that there was one ground where they might have a chance of controlling a crowd of demonstrators, the Exhibition Ground. The owners of the Exhibition Ground, the Royal National Association, refused to allow the game to be played there, fearing union reprisals. The Government responded by

declaring a state of emergency and commandeering the ground.³

On the Thursday night before the Saturday game a group of demonstrators gathered outside the Tower Mill. A large contingent of police had been bussed in from country areas. This was still the era of the Vietnam march protests and a significant majority of police at that time regarded protestors as communists simply because they were protestors, irrespective of whether their protest was peaceful or not.

While Bjelke-Petersen was in his early stages of being premier and in 1971 still had a shaky hold on the premiership in respect of challengers within his own party, the Queensland Police Force (as it was then known) had a new reformist Police Commissioner, Ray Whitrod. Whitrod had made it clear that he saw higher education standards for police as vital and in 1971 he was in his early stages of being Commissioner and his 'new broom' approach was being fiercely resisted by the police union.

³ See Crawford: Civil Liberties, Bjelke-Petersen & A Bill of Rights Bond Law Review, Vol. 21[2009] p7

There was therefore a volatile mix in the air. A new premier looking for an excuse to consolidate his weak position within his own party, a new police commissioner who was being actively opposed and undermined by the police union and a controversial state of emergency.

On the Thursday night after the demonstrators had been protesting outside the Tower Mill Motel where the Springboks were staying for a period of a couple of hours, Commissioner Whitrod who was present at the scene and attempting to direct police gave a direction for the protest to be dispersed.

What then followed was over enthusiastic even brutal force that was employed by far too many police. A number of protesters were chased down through the then very steep inclines of Albert Park which is opposite the Tower Mill and a number sustained quite serious arm and leg fractures.

One student took off in the direction down Wickham Street towards the then Trades Hall which was situated on the corner of Wickham Terrace and Edward Street. As he sought refuge in Trades Hall he was batoned by police and injured. His name was Peter Beattie.

I was not present on that night. My inherent conservatism caused me to view the whole scenario with a degree of lack of interest.

At the gathering outside the Tower Mill were a number of law students who were acting as legal observers. Some of those students were injured by police even though they were clearly marked as legal observers and the head of the legal observer group resigned because of his traumatic reaction to what he had seen occur when the police were ordered to disperse. It should also be noted that Commissioner Whitrod in giving the order to disperse then quickly directed police to return to their former positions in formation on the footpath. Many disobeyed that command and pursued demonstrators through Albert Park and elsewhere.

When the university students, particularly the legal observers, returned to the university campus, their tales of the unnecessary police brutality and the police disobedience of Whitrod's command to disengage from pursuit of the protestors tweaked my interest. I was at that stage studying criminal law and, to put it mildly, I saw something of a disconnect between what I was studying as to the principles of criminal law and so called restraints on police excesses

from what I was hearing in the lecture theatre compared to what I was hearing from the students who returned from the Tower Mill.

I agreed to join the legal observer group for the balance of the next 2 days of the lead up to and the running of the football game at the RNA grounds.

My attendance along with other law students at the RNA ground on the Saturday for the playing of the test match remains etched in my memory even now. The huge numbers of police, the significant tension in the air, the presence of my police brother John who viewed my new found role as a legal observer with a mixture of apprehension, antagonism and bemusement were all part of the mix.

While there was much debate at that time about the declaration of a state of emergency under the State Transport Act which was designed to deal with natural disasters and which was originally passed in the lead up to the second world war, what engaged me was the serious disconnect between the lectures I was receiving at the University of Queensland in relation to criminal law and the

role of the police and my observations about how far too many police behaved in practice at that time equating protest with communism and exercising their police powers with excessive force and not a semblance of accountability.

By his own admission, Bjelke-Petersen's response to the anti-Springbok protestors put him on the political map. Professor Ross Fitzgerald suggests that another important consequence of the Springbok's tour was that the Queensland Police began to support the Bjelke-Petersen government. This conclusion was drawn by Bjelke-Petersen himself who said "...I think it was a fact, too, that because of my support of them (during the Springbok's tour) the police came to trust me. They knew from then on that I would back them and that I would stand by them".

Bjelke-Petersen did stand by them. In 1976, a policeman was captured on film striking a female protest marcher on the head with a baton. Moves to hold an enquiry were quickly quashed by the premier. Shortly thereafter 12 people were arrested at a 'hippie' commune at Cedar Bay near Cooktown. The hippies claimed that the police burned their personal property and dwellings. A television crew produced footage of burned out huts. Bjelke-Petersen told the press that the allegations made by the hippies were part of a campaign to

legalise marijuana and denigrate the police. He stated that some of the evidence was manufactured after the police had left the scene. It turned out that the police had, in fact, torched the homes of the hippies. Charges were laid against 3 policeman but the prosecutions were unsuccessful.

On the 5th of September 1977 Bjelke-Petersen declared that 'the day the political street march is over... don't bother to apply for a permit. You won't get one. That's government policy now'. At that time if a march permit was refused by police there was an avenue of appeal to the Courts under the Traffic Act. Two weeks after Bjelke-Petersen's declaration, that avenue was removed and replaced with a right to appeal to the Police Commissioner. So began a two year conflict between the government and what has been called the 'Right to March Movement' during which over 1000 people were arrested over the course of many separate protests.⁴

In April 1977 there was a published a Report of the Committee of Inquiry into the Enforcement of Criminal Law in Queensland where the commissioners of the inquiry were Supreme Court Judge Lucas, then prominent defence lawyer Des Sturgess and recently retired Chief Superintendent of Police Don Becker. The Bjelke-Petersen government had

⁴ See Crawford page 8-9

been forced to establish that inquiry because of serious allegations of corruption and police perjury in court cases. The major recommendation of that inquiry was the mandatory tape recording of interviews in police stations to prevent the then wide spread practice of verballing. Bjelke-Petersen refused to implement that major recommendation because the police union opposed it. The verbal flourished for another 12 years until the Fitzgerald Inquiry reported in 1989.

One of the quirks of history was that my brother Frank was given the job of implementing the new regime of mandatory tape recording of interviews in police stations in 1989.

The Springbok State of Emergency, therefore, has to be seen in its political context particularly as to how Law and Order was for the first time in a long time in Queensland used by Bjelke-Petersen for great political effect. Within a short time of the state of emergency there were two by-elections held in the seat of Merthyr (New Farm) and Maryborough. Both were solidly won by the Bjelke-Petersen government and so began an era of Queensland police unaccountability that you had to live through to properly appreciate. Verballing of suspects was widespread, police regularly lied in Court with impunity with most Judges and Magistrates totally unprepared to believe that the police would behave in that

manner. Assaults in police stations were rife particularly against Aboriginal people.

This is the real context and legacy of the Springbok State of Emergency. Far too many police learnt that if you had the government of the day on your side you were effectively untouchable. Politicians learnt how Law and Order could be cynically manipulated to carry favour with the electorate.

The special branch rose in power and prominence throughout the 70s after the Springbok State of Emergency to become a feared and almost totally unaccountable squad within the Queensland Police Force.

During the Right to March era thousands of people were arrested simply for walking around the block from King George Square on Saturday afternoon without a permit. The special branch would attend Court on the following Monday and take down the names of people arrested and in due course when any of those arrested who were students left university and sought employment in the Public Service they were denied employment simply on the basis of their convictions for taking part in unlawful assembly during the street march era. I had a brother who had applied to become a nurse at the Royal Brisbane Hospital and he was accepted until a police check was done and he was then

rejected on the basis of having been before the Court on a charge of taking part in an unlawful procession, a charge that did not involve any allegation of assault or impropriety towards police. The essence of the charge was walking around the block with 100s of others on a Saturday afternoon protesting against the Bjelke-Petersen government where a permit had been refused for that march.

It is not overstating the position to put the Springbok State of Emergency and the behaviour of far too many police during that period as the beginning of a very dark era for Queensland which continued throughout the 70s and 80s and was only brought to an end by the startling revelations of the Fitzgerald Inquiry which resulted in the compliant Police Commissioner Lewis being jailed for 14 years for corruption and a totally new broom being put through the Queensland Police Service, as it was renamed.

In the early 90s the Peaceful Assembly Act was enacted. This was the first time in Queensland that there was a statute that attempted to regulate in a balanced way the competing rights of protestors who sought to protest in the streets and

those who sought to use the streets to go about their normal business and activity.

Since the Fitzgerald Inquiry and the passage of the Peaceful Assembly Act protest activity in Queensland has been fairly quiet. Generally speaking where there has been protests the post Fitzgerald era has mostly caused senior police to act with restraint in relation to what has been only the occasional street or political protest throughout the 90s and the 2000s.

However the G20 gathering set to take place in Brisbane next year will significantly test whether the current hierarchy and Senior Executive Service of the Queensland Police Service are committed to protecting and allowing the promotion of peaceful protest while at the same time carrying out what I recognise to be their arduous duty of protecting heads of state against violent protest.

The G20 gathering in London in 2009 and the G20 summit in Toronto in 2010 are harbingers of the protest issues which will arise from the 2014 G20.

The Courier Mail of January 19, 2013 in a headline 'CBD to become Fortress Brisbane for G20 Lockdown' noted that

inner city residents will have to carry passes to enter their homes when the city goes into lockdown for the G20 summit and up to 5000 officers will patrol the CBD and Southbank during the event including up to 1500 specialists from Queensland, interstate and overseas as well as Army and security personnel. Rolling lockdowns will close roads from the airport to the central business district while streets will be shut and people living near the event precinct will require ID and security clearances. Police bosses say they are ready to face terrorist threats and protest groups as they prepare for Brisbane's G20 summit.⁵

It is to be hoped that fact that the police bosses say they are "ready to face terrorist groups and protest groups" does not forecast a police attitude of putting both groups in the same basket.

The G20 in London brought about much controversy including the fatal batoning of a newspaper vendor who was moving to catch a train and simply got caught up in a protest. After a period of total unaccountability for that action a police officer had now been put on trial for the manslaughter of that newspaper vendor.

⁵ See Courier Mail January 19, 2013 by Thomas Chamberlin

In London in 2009 there was considerable controversy about some police groups such as the eerily named Territorial Integrity Group (TIG) engaging in excessive force on a worrying scale having removed their identification labels.

The concept of kettling namely police containment of large numbers of people including non-protestors within a large geographical area of inner London for hours on end including refusing people permission to leave the area to catch public transport, use toilets and the like resulted in that kettling practice being litigated as far as the European Court of Human Rights.

In the G20 summit in Toronto the same issue of kettling (or the confinement of protestors) featured and there was much controversy about police misconduct including the 'disturbing equation of protestors and terrorists by an Incident Commander which resulted in the decision to arrest 1100 people most of whom were peaceful protestors'.⁶

CONCLUSION

The G20 and the following Commonwealth Games on the Gold Coast represents the first major protest scenario since

⁶ See the Criminal Law Quarterly Volume 59, Number 1 October 2012 page 3

the Fitzgerald Inquiry and since the passage of the Peaceful Assembly Act.

It is well recognised that police face a challenging task to ensure that visiting heads of state particularly for the G20 are adequately protected and that appropriate terrorist monitoring is able to be carried out by police both at the G20 and the Commonwealth Games.

It is of equal importance that both at the G20 and the Commonwealth Games that police on the ground are well educated and visibly led by the Senior Executive Service not to conflate concepts of terrorism and protest.

It is to be hoped that we do not see for G20 in 2014 and the Commonwealth Games in 2015 a return to the unaccountable policing tactics of the early mid and late 70s.

What happened at the G20 in London in 2009 and in Toronto in 2010 are worrying portents in that regard.