

Governance, Protest and Sport: An Australian Perspective¹

IAN WARREN

Peaceful acts of protest are relatively common in popular Australian sports and entertainment. Traditionally, protest has been regulated through criminal and adjunct summary offences or policing legislation. Trends in corporate governance and state-sponsored event management have significant implications for individual and collective rights of protest at popular domestic and international events. In reviewing prominent incidents of protest and the evolution of public order laws in Victoria and New South Wales, this article highlights the complexity and contradictions underpinning the regulation of protest at major entertainment venues, and examines the impact of recent legislative reforms facilitating professional corporate event management.

Protest, Law and Popular Culture

The term 'protest' encompasses a vast array of intentional and imputed forms of conduct. The breadth and variety of forms of protest makes systematic analysis extremely difficult. Some protests are highly organised collective actions with a clear intention to communicate dissenting ideas to governments, private organisations or the general public. Vigils, sit-ins, blockades, primary and secondary boycotts, demonstrations, parades, marches and other forms of organised expression fit neatly into existing order maintenance frameworks promoting the peaceful communication of contentious social or political ideas. However, many actions have more subtle intentions, often leading to perceptions of threat, disorder and unrest, resisting neat classification through objective principles and languages of law.

There is no doubt sport is both a vehicle for protest in its own right and a setting for the communication of dissenting political, social and cultural views existing in the broader milieu.² Amongst the wide range of popular entertainments in Australia, national, regional and local sports receive significant yet highly disparate levels of popular exposure. Trends in elite sports management, marketing and the development of sport each impact on

Ian Warren (MA; LLB) is a Ph.D. Candidate at the School of Human Movement, Performance and Recreation, Faculty of Human Development, Victoria University of Technology.

the nature of dissenting messages and their public communication. Moreover, the interrelationship between the *state*, protesting individuals or *selves*, and the broader community of *others*³ is melded with various forms of cultural production and reproduction, deeming certain forms of protest legitimate and others illegal. The immense range of protest scenarios and settings in or associated with contemporary sports places considerable strain on law-makers, enforcers, sports managers and sporting cultures in defining and responding to contentious incidents in any given context.

The immense popularity of sport in Western society ensures multiple forms of cultural production through televised or print media and popular sports narratives.⁴ Each published discourse has a prominent role in communicating messages of hegemony or dissent by the state or aggrieved selves to diverse populations of interested others. Popular communication processes and their dissemination are central in classifying perceived or actual conduct as legitimate protest or illegitimate and worthy of formal legal intervention. As with analogous terms such as 'riot', 'disorder' and 'crime', the word 'protest' has various positive and negative connotations in popular language. The meanings evoked by these terms have important ramifications on how individual or collective acts are defined and interpreted by institutional practices of the state, law-making and enforcement bureaucracies, sporting cultures and society in general. Diverse methods of televised, press and literature production, invoking considerations of access, reception and interpretation, all feed into the complex equation relating to protest in or associated with sport and other forms of popular culture.⁵

When equated with disorder, threats to person, property or the sanctity of major cultural events, the prospect of collective protest often provides justification for the use of force or other forms of pre-emptive or reactive suppression by the state to maintain peace and good order. The discretion to tighten legal rules or enforcement practices is closely linked to popular languages and discourses equating protest with crime.⁶ Literature on riots continually suggests the popular media actively promotes negative discourses to divert public attention from contentious state practices and their often violent outcomes, or to accept their necessity in times of social change. While such practices invariably misinform the public on the nature of protest activity in various settings, Schoedinger indicates such trends also compromise effective law-making and operational planning for public order maintenance:

essential to the sensible planning for any riot control is the placing of riots in their proper perspective. Contrary to what the news media have often suggested, riots, even as serious as Watts, Newark, and Detroit, are neither *insurrection* nor *guerilla warfare*.⁷

Where individual acts of protest are concerned, accidental or incidental conduct is often mis- or re-interpreted as intentional protest by the state, the popular media or the broader community. This is particularly common in cases involving elite athletes, where the heat of the moment and spontaneous passions often thrust an unwilling or unprepared individual into the public spotlight. Televisual media plays a significant and highly problematic role in this process, with slow motion replays and their constant repetition converting the unintentional act, utterance or gesture into a popular newsworthy event.⁸

Each variable ensures the role of law in defining and responding to protest activity is clouded by a complex array of interpretations and values, compromising notions of objectivity, impartiality and consistency indicative of the legal process. Discretionary law-making and enforcement remain key variables to understanding the complex dynamics between the state, protesting selves and the broader public when laws regulating public order are invoked. Multi-tiered levels of governance characteristic of Australian federalism further complicate matters, with an amorphous mix of public, private, express and implied laws providing diverse choices for enforcement agents at local, state and national levels.⁹ Combined with the immense diversity of popular media sources and their varied print and visual outputs, each incident deemed an act of individual or collective protest has the capacity to be construed and misconstrued to the point where it has no objective meaning. As such, dominant and preferred constructions of certain behaviours, often sanctioned by political reality, law and conventional media production methods, are critical in the realm of protest.

The criminal law is the principal means of defining and responding to protest when individual or collective acts threaten to disrupt Australia's major sporting and cultural events. A combination of specific purpose and general laws under national and state criminal codes articulate powers to identify and control protest firmly within domestic policing jurisdictions. Often co-existing with venue- or event-specific order maintenance provisions, public criminal laws outline the broad limits of legitimate or illegitimate protest actions, and confer considerable enforcement discretion on state and federal policing agencies to preserve public order. Procedures of arrest, search and seizure, the inspection and confiscation of personal property, and even the regulation of language and methods of communication feed into this framework. Summary or criminal prosecutions, fines and terms of imprisonment are all potential outcomes when protest becomes disorderly or threatens the sanctity of a sporting or cultural event. By conferring clear powers and limits on authorised agents of state to intervene in private or citizen affairs, the criminal laws of protest follow accepted notions of British constitutionalism to curtail the reach of

state power.¹⁰ These provisions are often supplemented or duplicated by site-specific administrative 'by-laws' or statutory rules, reinforcing the primacy of state agents in public order maintenance. In the absence of a positive statement or charter of citizen rights, public law powers conferred through these methods offer a *de facto* statement of citizen responsibilities by encouraging peaceful public and private conduct, subject to competing citizen rights under the laws of property, privacy and equivalent common law and statutory regimes.

Developments in the administration of Australian sport and the evolution of governance have moved the goalposts significantly in recent years, leading to serious questions about the right to protest under Australian state and federal law. Throughout the last decade of the twentieth century, corporate philosophy has pervaded many aspects of Australian public law and life. Corporate governance and state-authorised site-specific event management provisions have become a core means of ensuring the professional administration of major events with domestic and international appeal. When combined with the systematic 'downsizing' and privatisation of public services and the rapid emergence of in-house and contracted private security, considerable doubt remains over the legal status of collective protest at major sporting and entertainment venues. Corporate and private philosophy also clouds the jurisdiction of state policing agencies, particularly at publicly sanctioned yet technically private events. The centralised rules of the criminal justice game no longer appear viable in securing the efficient or effective management of major events. Indeed, Australia's popular and successful sporting tradition has been one of the principal catalysts for the erosion of conventional notions of protest and order maintenance under national and domestic law.

The remainder of this article outlines the impact of these developments by providing a select history of individual and collective protest actions and their regulation at Australian sporting events. Of particular concern is the comparative impact of corporate governance and the historical co-existence of criminal justice and subordinate legislation governing site-management at major venues in Victoria and New South Wales. These states are Australia's most populated jurisdictions, with Melbourne and Sydney host cities for the only two Olympic Games held in the southern hemisphere, and each are extremely well-serviced by a range of sports venues catering for domestic, national and international athletes and patrons. The paper discusses the interplay between state and federal laws promoting domestic security and order maintenance through the public criminal law, and the effect of corporate governance on current rights to protest in these jurisdictions. Before proceeding it is necessary to outline some prominent themes, incidents and effects of various forms of protest and its regulation

at Australian sport from the range of sporting, legal, policing and popular cultural archives.

Prominent Themes and Notable Incidents

Notwithstanding the foregoing complexities and the absence of systematic data quantifying incidents of protest in Australian sport or society, disorder, harm and damage to person and property in and around sports venues is rare in domestic experience. Individual and team sports promote a diverse range of economic, social, political and cultural benefits, offering vital insights into the mainstream Australian psyche. Most prominent incidents of disorderly protest involve relatively isolated and rarely publicised actions. Where disorder has occurred, the relevant contexts and settings have been subject to extensive academic or journalistic inquiry. The relative absence of disorder, violence and disruption directly linked to protest in or associated with Australian sport is indicative of two possible trends.

On the one hand, sport provides a unique setting for Australian citizens and sports fans to engage in protest within recognised boundaries accepted by the rules, norms and customary values of sport. Most sports with mass popular appeal, such as dominant footballing codes in the Western 'manly' tradition,¹¹ attract and generate extremely diverse forms of cultural production. News items, stories of athletes, coaches and other participants and their exploits or opinions, and detailed social and cultural histories all provide a wide range of narrative voices prominent throughout Australian popular culture. Principles of freedom of participation and comment have a strong capacity to incorporate peaceful and critical dissenting views. However, the hegemonic dominance of certain sports in Australian culture indicates a strong capacity to suppress dissent both within and beyond the sporting realm. In other words, rather than accommodating protest, difference and diverse popular opinion within cultural norms and practices, dominant modes of producing sport and related cultural narratives are extremely good at excluding minority voices on the grounds of race, class, sex or gender identity, age, disability or related forms of 'otherness'. Australian sporting experience suggests both views are equally tenable.

Most popular televised sports, for instance, are dominated by male team activities. Professional and highly commercial football codes such as rugby league, rugby union, Australian Rules and soccer, combined with motor sports, horseracing, cricket and athletics, represent the norm in Australian popular culture.¹² Saturation coverage of these events occurs at the expense of alternate codes. Well-established manly team sports are over-popularised at the expense of activities such as netball, gymnastics, diving or weightlifting, the latter deriving subsistence through the participation of

women or ethnic and other cultural 'minorities'. Large 'coffee table' pictorial histories, investigative texts on specific incidents, themes or controversies, critical academic and research works, and an immense range of parodies and humorous 'piss-takes' all target dominant media cultures of sport through a critical, often cynical lens.¹³ Nevertheless, the effect of these discourses on changing the realities of hegemonic participation and popular communication practices remains conjectural.

In addition, the subject matter of individual or collective acts of protest demonstrates similarities across Western jurisdictions. Two tentative themes relating to protest at or involving organised sport are observable. First, sport is a prominent setting for the dissemination of messages relating to racial, ethnic or cultural disadvantage. Actions by athletes or spectators, either in connection with or focusing on the conduct of certain sports, have a substantial tradition of promoting awareness of various forms of discrimination, either within a particular sport or in Australian society more generally.¹⁴ A second and more recent trend locates protest within the urban and cultural landscape. Of particular concern is the precarious interplay between the sustainable development of sporting, cultural or entertainment institutions, and the maintenance of tradition, historical and cultural integrity and the Australian urban and rural environments. Contentious tensions between local and global economic, political, cultural and legal interests have led to considerable protest activity in recent decades, with sport and other forms of popular entertainment direct sites for confrontational and often heated debates over domestic and global governance policies.

Despite recent trends, direct targeting of sport by acts of civil protest is surprisingly uncommon in Australian history. Though local, national and international political and social developments often contribute to a substantial threat or fear of civil disruption amongst the Australian sporting populace, the majority of protest activities involving Australian sport have been overt actions integrated or accommodated within accepted 'rules of the sporting game'. Most protest acts or omissions lead to extensive public debate and awareness of problematic social and political issues, but little threat of disruption to the conduct of major events. Nevertheless, certain disorderly protest actions are evident in Australian sports culture and highlight pertinent limitations in communicating and responding to acts of civil and political dissent. The following brief and selective survey of prominent literature on protest actions associated with domestic and international sport provides several insights into the complex issues involved in defining and responding to individual and collective protest activity in and around Australian sports venues.

The modern Olympic movement has been a prominent site for protest activity, often leading to significant threats of disorder or terrorism. The

unifying ideal of sport in promoting peace and goodwill amongst diverse nations and cultures invariably clashes with the realities of international politics.¹⁵ The impact on host nations has been well-recognised since the massacre of eight Israeli delegates by Palestinian terrorists at the 1972 Munich Olympics, and extensive measures are routinely adopted to ensure security threats are no barrier to the continuance of the Games in times of international or domestic turmoil.¹⁶ Despite considerable potential for harm and disorder stemming from contentious international and local politics, disruptive protest actions are largely unknown in Australian Olympic experience.

Australia's two Olympic Games were each held amidst uncertain political climates offering considerable threats of protest ultimately failing to materialise. Although immensely under-researched,¹⁷ the 1956 Melbourne Games were conducted amidst a global political environment indicative of the Cold War period. The Games coincided with two prominent international incidents that heightened fears of disruption hitherto unseen in modern Australia outside the world war periods. United Nations troops intervened in the Suez Crisis on the day of the opening ceremony, leading to substantial and violent protests by Egyptian nationals on their soil. The Soviet invasion of Hungary and the seizure of deposed President Imre Nagy coincided with assassination attempts on the Iraqi president on day two of competition. This confusing amalgam of events threatened to cloud the two weeks of competition, with six nations boycotting the Games,¹⁸ yet barely caused a ripple in the Olympic city.¹⁹ The only significant incident of protest involved a bloody fight between the Soviet and Hungarian male water polo teams during their qualifying match in the Melbourne Olympic pool, an incident conspicuously overlooked in the official report of the Games.²⁰

The explosion of a pipe bomb on 27 July 1996 at Centennial Park, Atlanta, highlighted the unpredictability of terrorist activity at modern Olympic venues. A Turkish cameraman died of a heart attack at the scene where more than 100 people were injured, and the incident significantly heightened security concerns for the Sydney 2000 Organising Committee²¹ which were again unrealised. The perpetual self-surpassing Olympic philosophy ensures each event is hailed as 'the greatest Olympics ever'.²² Nevertheless, Sydney 2000 was devoid of major incident despite widespread concern over threats of international terrorist activity, organised pickets by pro-Indigenous rights groups prominent at other major athletics meets, and pre-event concerns over the lack of coordination between state, federal and private agencies charged with venue security.²³ Extensive integration of Indigenous culture throughout the opening ceremony and amongst the Australian athletic community, exemplified by the success of

400 metre runner Cathy Freeman, nominated to ignite the Olympic flame,²⁴ ensured the futility of any attempts to cause disruption at major venues by cashing in on the extensive domestic and international media coverage.

Several isolated incidents of protest were reported during the Sydney Games. During the closing ceremony, Australian rock band Midnight Oil appeared on stage with t-shirts prominently displaying the word 'Sorry', a pertinent reminder of the Howard federal government's failure to apologise to Indigenous communities after 200 years of displacement, discrimination and white Australian 'settlement'.²⁵ Of related concern was the suppression of economic protest through extensive ambush marketing regulations designed to secure exclusive protection for authorised sponsors and their Olympic memorabilia,²⁶ and the unpredictable activities of 'serial pest' Peter Hore, a diagnosed schizophrenic claiming to be a reincarnation of Christ with a history of disrupting major sporting and cultural events.²⁷

A prominent example of disorderly collective protest at domestic Australian sport involved the Springbok Rugby Union tours of the early 1970s. Harris details the systematic and organised activities of opponents of the South African apartheid regime with journalistic accounts from each venue.²⁸ Graphic photographs of police apprehending young males and females are combined with insider accounts of the organisation and conduct of these incidents, presenting a vivid memoir of the level of confrontation between state law enforcers and demonstrators aiming to stop the tour. Subsequent histories have failed to examine the direct law enforcement outcomes of this wave of post-1960s civil unrest in Australia. Nevertheless, this series of events clearly demonstrates the problem of organised protest at major sports sites. Supporters of the tour were actively and provocatively pitted against organised groups of predominantly student protesters, with a spiral of confrontation inevitably contributing to disorder and the contentious use of force by state police in most jurisdictions. The tour and the apartheid regime continued despite these intrusions. However, extensive domestic and international coverage raised considerable public awareness of the interplay between Australian sport, entertainment and international politics, arguably contributing to formal sanctions by all elite sporting bodies against South African athletes and teams persisting until the demise of apartheid in the late 1980s.²⁹

The 1982 Brisbane Commonwealth Games provided the basis for the most contentious law and order crackdown in recent Australian sporting history. Jock Given outlines the scope of this crackdown in response to the formation of the Black Protest Committee seeking to target the Games through 'peaceful and dignified' collective protest.³⁰ The then Queensland National Party government responded by threatening to repeal legislation conferring reserve land on Indigenous communities, and introduced 19 new

public order offences under the Commonwealth Games Act applicable to collective gatherings in and around Games venues. These measures provided impetus for several organised gatherings, leading to a series of peaceful rock concerts and other Indigenous events in the lead-up to and during the Games. Thirty-nine Indigenous people were arrested and detained during the Opening Ceremony and around 300 arrests followed under these provisions during the subsequent two weeks. Along with collective demonstrations, pro-Indigenous groups smuggled flags into the main stadium with no formal police action taken. The publicity of these incidents on domestic and international television strengthened consciousness amongst Indigenous groups, despite continued divisions between politicians, law enforcers, and Indigenous communities in Queensland and other jurisdictions following the Games.³¹

Several domestic sporting events, such as motorcycle racing, one-day and test cricket, soccer and shooting sports,³² have been settings for various forms of protest and periodic incidents of disorder in recent decades. During the 1980s a series of law enforcement crackdowns at the annual Bathurst motorcycle races contributed to a number of landmark studies on police relations with minority sub-cultures at entertainment venues.³³ Rob Lynch's work on class relations at international one-day and test cricket fixtures has been highly influential in fostering awareness of the interplay between social class, 'rowdiness', protest and commercialisation in Australian sport,³⁴ heavily influencing subsequent works on law enforcement, ethnicity and social culture at Australian soccer³⁵ and related events including heavy metal rock concerts.³⁶

Recent acts of individual protest at Australian sport bear marked similarities to international experience. Incidents involving athletes highlight often misguided popular concerns over the extent of racial violence at events such as domestic soccer. With substantial multi-ethnic support and fuelled by sensational media coverage highlighting the un-Australian nature of 'soccer's fierce ethnic passions',³⁷ acts such as Perth Glory striker Bobby Despotovski's three fingered Serbian salute to a predominantly Croatian end heighten broader community fears of domestic ethnic tensions.³⁸ As each incident of youthful disorder on the terraces combines with reports of maladministration and calls to 'de-ethnicise' the world game on local playing fields, the perception of racial conflict promotes a confrontational spiral of control at major domestic fixtures. Consensual and common sense harm minimisation strategies, improvements to venue facilities and greater tolerance of carnival activities such as the waving of banners or discharge of flares are overlooked in the order maintenance equation, while popular attention is diverted from problematic relations between Australian law enforcement agencies and diasporan male youths under the false shroud of ethnic conflict.

A final example worth noting relates to the recent controversy surrounding former National Rugby League star-turned-professional boxer, Anthony Mundine. The sport of boxing represents a confusing paradigm for racial empowerment, but exemplifies the melding of Trojan Horse and direct protest motives at sport events and the complex role of state regulation. Tatz's pioneering work in this field draws on the disproportionate successes of Indigenous boxers and the relationship between empowerment of the self and Indigenous communities through engagement in the professional prize ring. As a form of protest in its own right,³⁹ the contentious ethics of prizefighting allow for economic self-determination as well as popular cultural recognition when revered fighters from minority communities wave the flag on behalf of the Australian nation. Other groups, notably post-Second World War southern European immigrants, have also promoted widespread recognition of various forms of social disadvantage through success in the boxing ring, and this tradition has filtered through into other dominant sporting codes.⁴⁰ Despite the questionable legality and risks associated with this pastime,⁴¹ without such participation and the popular cultural rewards thereby produced, much awareness of the social plights of racial and other minority participants and their communities would be lost, ignored, or solely confined to the Australian political realm.⁴²

Two days after defeating Perth boxer Guy Waters, Mundine was interviewed on morning television by entertainment journalist Richard Wilkins. In response to a question about the United States government's response to the 11 September terrorist attacks, the 'outspoken world title contender' and convert to the Islamic faith stated: 'Its not about terrorism, it's about fighting for God's laws ... America's brought it upon themselves, you know, in what they've done in the history of time'.⁴³ Wilkins denied any intention to trap Mundine, and during a corrective interview that evening on the same television station the statement was toned-down after considerable publicity on most news and current affair programmes throughout the day.

Two notable issues emerged in the immediate aftermath of this incident. First, the diversity of publicity in Melbourne's daily newspapers indicates the breadth of journalistic narratives relating to sport. The *Herald-Sun* and *The Australian* each ran prominent 'headline' stories on the statement in the 'news' sections of their respective Monday afternoon and Tuesday editions.⁴⁴ *The Age* did not report the incident as either daily or sporting news. Two days later the World Boxing Council (WBC) stripped Mundine of his world ranking, with United States boxing officials threatening a permanent exclusion from competition in response to the comment. WBC president Jose Sulaiman stated: 'Such statements are unbelievable and intolerable and seriously hurt world society and boxing ...[t]he WBC will

not tolerate the utilisation of a position in boxing to make such absurd and denigrating public statements'.⁴⁵ Mundine fought in a sanctioned International Boxing Federation world title fight held in Germany on 1 December 2001.⁴⁶

Three pertinent themes can be drawn from these examples. First, Australian sport clearly has the capacity to accommodate and even embrace acts of individual or collective protest, provided the sanctity of the event remains unaffected by intentional disruption. Adherence to formal norms and customs of sport can facilitate the widespread communication of dissenting images or statements, even in the most comprehensive law and order climate. The strategic value of individual acts of protest and their emotive power, such as the symbolic 'Black Power' salute at the 1968 Mexico Olympic Games,⁴⁷ are a pertinent reminder of the importance of sport as a central communication device to global and domestic audiences regarding contentious governmental practices, discriminatory social policies or human rights violations. Nevertheless, the practical legacies of such actions remain the subject of further critical inquiry.

Second, and by logical extension, disorder and harm to persons and property have generally emerged where the aims of protest have been over-ambitious, or where law enforcement responses actively seek to suppress dissent, collective expression or fun. The Springbok tour provides evidence of the former trend, with protesters taking an unrealistic and uncompromising stance in attempting to stop each match from proceeding. Evidence from Bathurst highlights collective and violent resistance by biker sub-cultures in direct response to saturation policing methods aimed at sanitising various forms of recreational expression considered unlawful or anti-social. In both cases harmful disorder was a direct and inevitable legacy of these tactics, driving a communications wedge between law enforcers and protesters, undoubtedly linked to physical violence, counter-violence and a spiral of civil disorder and interpersonal harm. Similar themes are evident in conflicts between police and young men at Australian soccer matches. Popular media depictions feed into this process by over-exaggerating causal links between confrontational youthful ethnicities and violence at the expense of alternate explanations focusing on masculinity, problematic relations with law enforcement and state authority, and social dislocation.

Third, local, national and international political developments are intimately linked with Australian sport at a variety of levels. It is fruitless to consider the issue of protest without recourse to broader social, political and cultural developments affecting sport and everyday life. As demonstrated below, most of these issues promote adversarial and confrontational legal and enforcement philosophies of control, order maintenance and the

suppression of protest under the criminal law. However, recent developments in corporate governance simply ignore or side-step any concept of the right to express dissenting views at major domestic and international entertainment fixtures, primarily to ensure the commercial sanctity of these popular events.

Criminal, Summary Offences Laws and Site-Specific Regulations

As a sub-branch of a rapidly emerging field of entertainment law, traditional federal and state legislative measures in and around sports stadia are largely devoted to consolidating pre-existing criminal justice procedures and practices. Historically, the bulk of responsibility for order maintenance at domestic and international sporting fixtures has involved the enforcement of state-based criminal and summary offences legislation with general application. Occasionally, these principles are supplemented by subordinate legislation or venue-specific by-laws reinforcing or duplicating the jurisdiction of state policing agencies in these largely private spheres with some modifications. At major events of national or international significance, federal laws dealing with the protection of Commonwealth landmarks or the preservation of national security supplement and override state provisions where the two conflict.⁴⁸ The following provides a brief overview of significant Victorian and New South Wales public order legislation and site-specific subordinate regulations, and outlines various effects of these provisions on public law enforcement activity in and around major sports stadia and related venues.⁴⁹

Each Australian state has exclusive jurisdiction over non-federal criminal matters under the respective Crimes Acts and related Criminal Codes. The Victorian Crimes Act 1958 and the New South Wales Crimes Act 1900 outline a variety of offences relating to public disorder with general application in or around any public place.⁵⁰

In Victoria the Unlawful Assemblies and Processions Act 1958 is the principle legislative enactment regulating public disorder alongside common law offences of riot, rout, common assault and unlawful assembly.⁵¹ Section 5 prohibits riotous and tumultuous meetings disturbing the peace throughout the state and provides legislative indemnities for those who kill, hurt or maim suspects in attempting to quell such disturbances. Section 6 empowers a magistrate to disperse an unlawful assembly by reading 'the Riot Act' in the following terms: 'Our Sovereign Lady the Queen doth strictly charge and command all manner of persons here assembled immediately to disperse themselves and peaceably depart to their own homes. God save the Queen.' Failure to disperse within 15 minutes can lead to mandatory arrest without a warrant and summary prosecution or an

indictable offence.⁵² The provisions extend to all public meetings other than parliamentary proceedings and encompass behaviours including the carriage of weapons, the display of provocative banners, flags, emblems or symbols, and the chanting of provocative songs.⁵³ The Act also provides detailed requirements for the appointment of special constables through magisterial order,⁵⁴ and public inquiry and compensation procedures where damage to person and property occurs.⁵⁵ Adjunct provisions under the Crimes Act 1958 provide criminal penalties for damage to buildings and other property caused by riotous behaviour or forcible entry, and prohibit taking unlawful oaths to commit acts of treason or the formation of collective associations with seditious aims.⁵⁶

Part IIIA of the New South Wales Crimes Act 1900 provides statutory definitions of riot and affray whilst abolishing their common law equivalents.⁵⁷ Under section 93B a riot consists of a gathering of 12 or more persons who use or threaten violence with a common purpose with the effect of causing a 'person of reasonable firmness ... to fear for his or her personal safety'. There are no qualifications stipulating the offence must occur in a public place,⁵⁸ and proof of intention to use violence, or awareness that one's conduct may be violent is essential to establish the mental element of the crime.⁵⁹ A maximum penalty of ten years imprisonment may be imposed.⁶⁰

Criminal laws also serve to consolidate state police powers regarding on-site enforcement of public order laws. Specific offences are designed to protect police members by prohibiting harmful activity aimed at resisting arrest and lawful apprehension,⁶¹ either during the commission of a suspected offence or through the issue of a warrant or related paper procedure.⁶² Bogus calls for police assistance are also covered under general public mischief prohibitions.⁶³

An extensive range of secondary offences applies to protest activities threatening to cause harm to persons and property. These include prohibitions on the intentional or malicious destruction of property,⁶⁴ offences relating to transport facilities including airlines and railways,⁶⁵ issuing documents containing threats to cause harm,⁶⁶ common assault and causing grievous bodily harm,⁶⁷ unlawful possession or manufacture of explosives and other dangerous goods,⁶⁸ contamination of goods,⁶⁹ breach of recognisances to keep the peace,⁷⁰ and a variety of offences relating to aiding and abetting as a principal or a secondary offender, or procuring any indictable or summary offences under the criminal law.⁷¹

Summary or police offences legislation in each state supplements these general criminal law prohibitions. In Victoria, the Summary Offences Act 1966 contains numerous provisions directed specifically at protest activity and the maintenance of public order in and around entertainment venues.

Under section 17, the Victoria Police have extensive discretion to prevent or prosecute various activities in public places, including obscene, indecent or threatening conduct, offensive language, songs, ballads, artwork, flags and other symbols, and summary activity of a riotous, offensive or insulting nature.⁷² Most judicial decisions relating to these provisions and their historical equivalents relate to the possession of dangerous weapons in public places, or the possession, production and distribution of seditious or pornographic material.⁷³ Additional prohibitions apply to obscene exposure, obstructing traffic, willful trespass, damaging fountains, shrines, monuments, statues and other public structures, property destruction, defacing public property with chalk, spray paint, placards or posted bills, lighting fires, public drunkenness and the possession of offensive implements including knives or other weapons likely to cause injury to persons or property.⁷⁴ Supplementary provisions require the authorisation of public assemblies from senior police managers or by Supreme Court order, with particulars of the date, time, nature, location, route or any other relevant matters likely to affect public order to be furnished by the applicants.⁷⁵

The final cluster of provisions involve site-specific venue regulations or by-laws passed under the authority of a principle or enabling Act of Parliament. The Melbourne Cricket Ground Regulations 1994⁷⁶ and various by-laws passed under the Sydney Cricket and Sports Ground Act 1978 delineate a range of site-specific regulations aimed at ensuring good order within and around these major stadia. Most provisions duplicate summary offence laws relating to language, preservation of venue property, and the possession or discharge of offensive and dangerous items. More importantly, venue regulations help to clarify police jurisdiction in mass-private entertainment sites, and confer additional enforcement powers on in-house or sub-contracted private security agents,⁷⁷ voluntary stewards and venue managers. In operational terms, statutory regulations are preferable to formal criminal or summary prosecutions, offering a convenient mechanism to deter and prevent rowdy behaviour from escalating into large-scale collective illegality and disorder. However, criticism has been levelled at recent amendments to venue regulations aimed at promoting security at major domestic and international sporting fixtures, with increased fines for pitch invasions and the prospect of temporary and permanent exclusion orders extending well beyond conventional notions of re-active criminal responsibility.⁷⁸

This extensive amalgam of public criminal, summary offences and subordinate legislation are the primary and traditional mechanism for identifying and responding to individual and collective protest activities in Australian society. There are two principal functions of these laws. First, the

prohibitions outline the limits of permissible civil conduct in public places subject to authoritative intervention by police agencies and other authorised state organisations. Second, these provisions confer substantial rights, responsibilities and discretion on police and allied agencies to define disorderly or anti-social conduct, and to prevent the commission or continuance of behaviour in public or private threatening to cause civil unrest. Of particular concern is the absence of any statements conferring a general right to protest. Indeed, any right to engage in collective acts of protest is invariably subject to approval by senior police members or the judiciary on formal application, or remains implied by what is not prohibited or canvassed under these multiple and overlapping rules. The problems of this omission are extensive, particularly in light of the selective and discretionary enforcement or non-enforcement of these prohibitions in any public order scenario. This is compounded by the lack of qualifying statements regarding appropriate levels of discretionary force to be employed by public or private agents under each strand of law. The *de facto* rights status of these provisions, nevertheless, contrasts with recent developments in corporate governance prominent at major sporting events throughout the last decade of the twentieth century. This shift has been instrumental in facilitating the sound commercial and economic management of major sporting and cultural events, in absence of any direct and positive statements outlining a right to protest under Australian federal or state law.

Corporate Governance

Commencing in the early 1990s, corporate governance began to penetrate federal, state and local law-making institutions with a variety of contentious and at times problematic effects. The most profound implications stem from the corporatisation and privatisation of public criminal justice institutions, with prisons and policing heavily affected by corporate managerial philosophies, economic rationalism and public service downsizing.⁷⁹ The often haphazard supplanting of state institutions with corporate structures rests somewhat uneasily with conventional notions of public service provision and public law philosophy favouring centrally funded and publicly accountable state service provision.⁸⁰ The speed and extent of these substantial constitutional and legislative changes, initiated by a highly reformist Liberal political agenda in the state of Victoria, are only just beginning to be realised in the new millennium with a change of government and a new political climate favouring community consultation and open democratic participation.

An adjunct function of corporate governance is critical to the field of entertainment law. As part of the entrepreneurial push to generate increased

state revenue during the 1990s, corporate governance became the central method of securing the specific-purpose management of major recreation and sports venues, either for initial development, up-grading or ongoing day-to-day maintenance. Throughout the 1990s, various locations affected directly by corporate management regimes were direct sites of collective protest activity. Environmental changes to city and popular resort landscapes pitted supporters of heritage preservation and consultative democracy against those advocating development, progress and the promotion of economically viable industries such as tourism, sport and the arts through non-democratic means. Corporate philosophy provided a means for ensuring the private management of many prominent domestic and international events with direct legislative sanction, notably at state level. The following examples illustrate the legislative framework prompting these developments, and some implications of this process in generating and quelling protest and other forms of dissent central to notions of public accountability and democratic participation in matters of sport, entertainment management and governance.

The most prominent example of corporate governance leading to extensive local protest is the Australian Formula One Grand Prix. Originally held in Adelaide, the capital city of South Australia, the event was subject to a political coup by the conservative Victorian Kennett government in 1994. The intricate politics underpinning this shift remain largely unknown to the broader Victorian community. However, public opposition to the choice of the Albert Park site for this annual and highly popular international fixture was considerable and indicative of the extent of local concern surrounding the influence of economic rationalism on the urban environment and regional democratic participation.

Located within five kilometres of the centre of Melbourne, the site is surrounded by a densely populated middle-class residential district and a mixture of small- and large-scale commercial businesses. The 5.3km track, compliant with international Formula One standards, skirts an extensive network of public reserves accommodating local football, soccer and cricket grounds, a public golf course, boating and walking facilities surrounding the Albert Park lake. The region is serviced by trams terminating at the city centre, and forms a picturesque gateway to Melbourne's eastern and south-eastern suburbs.

Local residents and small business operators concerned with the environmental impact of the event formed the Save Albert Park group in a concerted attempt to raise significant awareness of the intrusive and undemocratic nature of the Kennett government's decision. From the first announcement of the temporary site in 1994,⁸¹ this loyal yet dwindling band of protesters maintain an annual vigil at the site, and continue to engage in

highly publicised opposition to the commercial and cultural benefits advocated by race supporters within and beyond state parliamentary circles. Substantial environmental development to the entire region immediately followed the public designation of the Albert Park site, and served as the primary focus of systematic resistance to preserve the history and peace of this recreational setting. Despite extensive domestic and international publicity, the continued designation of the site as temporary under Victorian law, and the death of a volunteer steward after a crash involving Jacques Villeneuve in 2001,⁸² the Bracks Labor government elected in 1999 have extended the state's agreement with the Federation Internationale de l'Automobile (FIA) until 2008. The event is now well entrenched in Victoria's annual sporting calendar and contributes significantly both to state government revenue and tourism, and to Australia's international reputation as a sporting nation.

The melding of environmental, political, local and international concerns over the selection and use of the site represents half of the Albert Park story. Of core significance to entertainment law is the legislative regime securing the management of this event. The Australian Grands Prix Act, Vic, 1994, also regulating site management at the Australian 500cc Motorcycle Grand Prix at Phillip Island, 125km south-east of the Melbourne central business district, confers extensive powers on the Australian Grand Prix Corporation to oversee and manage all aspects of the event.⁸³ The Corporation has a structure and powers analogous to public and private companies under Australian state and federal law, including the right to acquire property, perpetual succession, the use of a common seal, and the right to sue or be sued in the corporate name.⁸⁴

While technically a public corporation subject to the control and oversight of the Victorian Minister for Sport,⁸⁵ the Corporation has exclusive monopoly and quasi-private powers to manage and promote the event each year, to secure the Albert Park site, and to undertake all necessary environmental adaptations to ensure the race conforms to FIA standards.⁸⁶ The permanent 'renovations' to the Albert Park region combine with significant exemptions from private and public legal actions by aggrieved citizens under the laws of nuisance and related health, environment protection and local government legislation stemming from the race itself or environmental changes to the venue commissioned under the authority of the Act.⁸⁷ The absence of any direct consultative debate on the viability of the Albert Park or any alternative sites is clearly evident in the scope of the Corporation's additional powers. Any notion of a public right to protest at the site, or express community-based challenges to the viability of the event and its management are neatly evaded by this site-specific corporate model.

Detailed provisions identify a wide range of functions associated with the efficient corporate and economic management of the event. Exclusive rights are conferred on the Corporation acting on behalf of the state of Victoria to determine appropriate entry fees, national and international tourist schemes associated with the event, sponsorship, merchandising, photographic, broadcast and intellectual property rights, and to accumulate and manage Corporation assets.⁸⁸ The Act contains prohibitions on ambush marketing and the misuse of authorised race logos and insignia enforceable by the Victoria police,⁸⁹ and confers extensive real property rights over the site and its environmental management including the power to cordon off certain areas during specified periods or at the Corporation's discretion.⁹⁰ Powers to make regulations governing the administration of any aspect of the Act or the event are also conferred on the Corporation⁹¹ and section 49 contains extensive restrictions on public access to official Corporation documents and commercial contracts through state freedom of information laws.⁹²

These provisions have become a model for the staging of international events on Australian territory. The Sydney Organising Committee for the Olympic Games (SOCOG) Act, NSW, 1993 replicates the corporate managerial structure emblematic in the Grands Prix legislation. Sections 4 and 6 constitute SOCOG as a corporation with perpetual succession, a seal, and powers to sue or be sued under the corporate name. Section 5 indicates the organisation is responsible for its own assets and debts, and the Committee's budget is independent of any New South Wales parliamentary revenues. Under s.6(1), the Committee has the same legal capacity and powers as a company under the corporations law within and outside the state of New South Wales.⁹³ The Committee's organisational and managerial powers subsist from the passage of the Act until all financial and administrative matters are cleared on completion of the event.⁹⁴

While corporate structures provide a convenient vehicle for the sound commercial management of major sporting events with international or extensive domestic appeal, there is a darker side to this model. Nineteenth century pre-centralised criminal justice history indicates decisions of corporate managers were seldom made with the best interests of the community or democratic society in mind. The 1809 English case of *Clifford v. Brandon*⁹⁵ is a significant historical precedent outlining the implications of corporate democracy and private justice in generating protest at popular entertainment venues.

As part of a series of protests advocating a return to the 'Old Prices'⁹⁶ after renovations to Covent Garden theatre, the case concerned the right of Mr Clifford MP to obtain compensation for false imprisonment and trespass to the person after management intervention to quell the disruption.

Evidence indicated Clifford did not actively engage in or promote the disturbance, and compensation of £10 was awarded for the inconvenience caused. Of particular note is the extent of private discretion to maintain good order and decency within the theatre as conferred under Royal Patent by Charles II in 1674. These powers are extremely similar to the monopolies in the Grands Prix and SOCOG examples, including extensive rights to charge fees for admission, to expel redundant actors permanently from the venue, to allow all parts for women to be played by men, and to 'purge ... all scandalous and offensive passages' from 'the old plays'. In absence of any countervailing public statement of rights to collective protest, the corporate management of popular entertainment effectively privatises the enforcement of public morality, civil dissent and entertainment culture, while ironically contributing to the very sorts of protest action these models attempt to avoid.⁹⁷

Legacies of Public and Private Regulation

Detailed histories of British popular recreation in the eighteenth and nineteenth centuries by Hugh Cunningham⁹⁸ and Guy Osborn⁹⁹ demonstrate a predictable and continuous oscillation between public and private governance. This process involves the same core regulatory issues essentially serving identical purposes. However, while the public strand facilitates open democratic participation in civic affairs, private governance decrees community involvement is an impediment to the specialist and professional management of popular recreation. Land enclosure trends in nineteenth century Britain support this argument, with public law and centralised criminal justice helping to alleviate restrictions created by the privatisation of popular recreational space and the related inter-class protests this fostered.¹⁰⁰ By extension, the centralisation and popularisation of many state-sponsored entertainment and cultural pursuits in the previous era allowed for the evolution of communitarian and public recreational options as a form of protest against arbitrary and harsh private governance and justice administration. A mutually dependent evolution is discernible, with public and private legal alternatives representing two opposing sides of the same regulatory coin.

The civil actions of false imprisonment and trespass to the person in *Clifford v. Brandon* were directed at a private individual with state-sanctioned law enforcement powers. Centralised consolidation of the criminal justice system ensures these same actions are available against public police and agents of state. The core difference is the shift from the private and specialist management of protest and order maintenance to the centralised statutory regulation of public behaviour at entertainment and

cultural events. As the foregoing analysis demonstrates, both private and public forms of regulation have potentially repressive effects on the right to protest. In each case, considerable discretion is granted to private or public agents to define and respond to a vast range of actions threatening to disturb the smooth and peaceful running of major entertainment events. The core difference rests with the Western constitutional requirement that state intrusion into community life to preserve peace, order and good governance be met with clearly discernible statutory limits:¹⁰¹ a *de facto* bill of rights through criminal and related laws. Private governance, through corporate structures and professional state-sanctioned or site-specific managerialism, dispenses with this requirement. The consequence is a suspension of the democratic rule of law, the realistic prospect of direct organised protest in response, as well as a host of allied implications on the right to participate in civic affairs.¹⁰²

Neither approach provides an ideal paradigm when dealing with the problematic concept of protest and the peaceful regulation of collective behaviour at popular entertainment sites. Motorcycle and related sub-cultures have been subject to repressive, intrusive and confrontational public law administration, while concerns of middle-class residents in and around the Albert Park site continue to be relegated in the face of lucrative tourism and corporate revenue promoted by specialist event management. What is clear is the continuance of a public-private cycle revisiting many limitations inherent in Western justice administration. A recent Victorian proposal, aimed at regaining ground lost to corporate governance by providing a legislative right to peaceful assembly, is illustrative.

The Peaceful Assemblies Bill seeks to repeal the Unlawful Assemblies Act and is aimed at 'ensuring that the police have adequate powers to enable them to protect the community, without interfering in the civil rights of citizens engaged in lawful activities'.¹⁰³ The ten clause Bill provides amended definitions of 'riotous assembly', extends 'riot act' powers to senior operational police with summary penalties for failure to disperse within 15 minutes, and declares the right to peaceful protest subsists subject to 'the rights of members of the public to enjoy the natural environment and the rights of persons to carry on business and other lawful activities'.¹⁰⁴ While seemingly meeting these ministerial aims three core criticisms can be discerned.

First, the Bill provides no constitutionally enshrined guarantee of a citizen's right to peaceful protest. In fact, the right to protest is subject to existing rights protected under public and private law, thereby reinventing a hierarchy of rights where protest has minimal scope to compete on equal terms. Second, the term 'public place', commonly used in Summary Offences legislation, is employed as the basis for conferring police

jurisdiction to preserve order. This term is rendered virtually redundant by a history of Australian and British common law decisions favouring the classification of any place as public to justify retrospectively a police decision to enforce criminal or summary laws,¹⁰⁵ and by the very corporate and privatisation developments the Bill seeks to rectify. Third, the proposal is notably silent on how the rules of peaceful and legitimate protest are to be negotiated before and during such actions by citizens and state-authorised public and private agencies. This omission is highly regrettable in a political climate where anti-globalisation campaigns and police enforcement tactics are subject to extensive and often provocative mass media publicity, and costly, lengthy and often contentious inquiries by government departments and the civil courts.¹⁰⁶

In an era where the rules of civil society appear to be irreversibly challenged by threats and fears of large-scale and surprise terrorist activity, notions of fostering peace and security through strong enabling laws and civil order maintenance powers predominate. However, the right to protest still remains a core and valuable element of Western democratic tradition. Multiple laws, contests and conflicts between public and private ethics confer various limits on civil behaviour, invariably at the expense of simple, accessible and inclusive rules conferring clear responsibilities on citizens and all agents of state to conduct affairs openly and peacefully. The entertainment sphere has been a principle setting for the removal of citizen rights through corporate governance, or the fortification of state power to preserve dominant and hegemonic notions of collective peace and good order. Australia's sporting traditions suggest peaceful co-existence can be promoted through inclusion, popular reflexive narratives and thoughtful, creative acts of protest within prescribed and conventional norms. Australian sporting experience demonstrates acts of protest have a positive and largely accepted role in raising popular awareness of human rights through a powerful cultural forum incorporating minority voices and their concerns. Adapting these traditions into accessible, inclusive and rights respecting laws preserving civic peace and democratic freedom for all citizens remains the core challenge in Australia and beyond for the new millennium.

NOTES

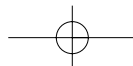
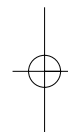
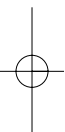
1. Versions of this paper were presented at the International Association for the Philosophy of Sport Conference: Sport and the Body, Victoria University of Technology, Melbourne, 5 September 2000, and the 12th annual Australian and New Zealand Society of Criminology Conference, University of Melbourne, Parkville, February 2001. The author would like to thank Emma Ryan, Steve James, Martin Aston, Dennis Hemphill, Guy Osborn and the two anonymous referees for their patience, advice, counsel and assistance.

2. G. Osborn, 'Football's Legal Legacy: Recreation, Protest and Disorder', in S. Greenfield and G. Osborn (eds.), *Law and Sport in Contemporary Society* (London and Portland, OR: Frank Cass, 2000), 51–68; E. Cashmore, *Making Sense of Sports*, 2nd edn. (London: Routledge, 1996).
3. A. Freeman and E. Mensch, 'The Public-Private Distinction in American Law and Life', *Buffalo Law Review* 36 (1987), 237–57.
4. P. Bordieu, 'How can one be a sports fan?', in S. During (ed.), *The Cultural Studies Reader* (London: Routledge, 1993), 339–56; W.J. Morgan, 'Multinational Sport and Literary Practices and their Communities: The Moral Salience of Cultural Narratives', in M.J. MacNamee and S.J. Parry (eds.), *Ethics and Sport* (London: E & FN Spon, 1998), 184–204.
5. S. Hall, 'Encoding, Decoding', in During (note 4), 90–103.
6. C. Cunneen and M. Findlay, 'The Functions of Criminal Law in Riot Control', *Australian and New Zealand Journal of Criminology* 19 (1986), 163–78.
7. D. Schoedinger, 'Riot Control and Legislation: A Necessary Evil', in M. Cherif Bassiouni (ed.), *The Law of Dissent and Riots* (Springfield: Charles C. Thomas, 1971), 337–56, notes omitted and emphases added.
8. I. Warren and S. Tsaousis, 'Racism and the Law in Australian Rules Football: A Critical Analysis', *Sporting Traditions: Journal of the Australian Society for Sports History* 14/1 (1997), 27–53.
9. See A. Twomey, 'Dead Ducks and Endangered Political Communication – *Levy v. State of Victoria* and *Lange v. Australian Broadcasting Corporation*', *Sydney Law Review* 19/1 (1997), 76–94, involving the relationship between federal implied rights to freedom of political communication and state laws prohibiting duck rescuers from entering authorised shooting areas for their own safety.
10. A.V. Dicey, *The Study of the Law of the Constitution*, 8th edn. (London: Macmillan, 1915), 'Introduction' and passim.
11. See generally R. Hess and B. Stewart (eds.), *More than a Game: An Unauthorised History of Australian Rules Football* (Melbourne: Melbourne University Press, 1992).
12. B. Wilson, 'Pumping up the Footy: The Commercial Expansion of Professional Football in Australia', in D. Rowe and G. Lawrence (eds.), *Sport and Leisure: Trends in Australian Popular Culture* (Sydney: Harcourt Brace Jovanovich, 1990), 27–37; S. Cunningham and T. Miller, *Contemporary Australian Television* (Sydney: University of New South Wales Press, 1994), 63–89.
13. Examples of each of these forms include G. Hutchinson and J. Ross (eds.), *200 Seasons of Australian Cricket* (Sydney: Ironbark, 1997); C. Tatz, *Obstacle Race: Aborigines in Sport* (Sydney: University of New South Wales Press, 1995); R. Masters, *Inside Out: Rugby League under Scrutiny* (Sydney: Ironbark, 1997); R. Cashman, *Paradise of Sport: The Rise of Organised Sport in Australia* (Melbourne: Oxford, 1995); T. Gleisner, *The Warwick Todd Diaries* (Sydney: Australian Broadcasting Corporation, 1997); T. Gleisner, *Warwick Todd: Back in the Baggy Green* (Sydney: Australian Broadcasting Corporation, 1998).
14. Tatz (note 13); Cashmore (note 2).
15. See C.R. Hill, *Olympic Politics: Athens to Atlanta 1896–1996*, 2nd edn. (Manchester: Manchester University Press, 1996); Cashmore (note 2), 235–42; P. Sheil, *Olympic Babylon* (Sydney: Macmillan, 1998).
16. See A. Thompson (ed.), *Terrorism and the 2000 Olympics* (Sydney: Australian Defence Studies Centre in conjunction with the Australian Defence Force Academy and the University of New South Wales, 1996).
17. Hill (note 15), 39–40. Regrettably, the political climate surrounding the Melbourne Olympics is confined to a brief examination of the International Olympic Committee's (IOC's) recognition of Communist East Germany's right to participate as an independent nation.
18. Cashmore (note 2), 236.
19. See generally, *Herald Sun, Famous Front Pages of the 20th Century* (Melbourne: Hardie Grant Books, 1999), 141–2. These extracts are extremely illustrative. The first, dated Thursday 22 November 1956, marked the opening of the Melbourne Games with

- photographs of the athletes' march on the Melbourne Cricket Ground and the lighting of the torch: a brief nine-paragraph column outlines the nature of the riots in Port Said. The second, dated Saturday 24 November 1956, honours the success of Australia's 'pretty girls' Betty Cuthbert and Marjorie Jackson, each breaking the world 100m sprint record in their respective heats. A single column documents the seizure and detention of the Hungarian president in a Yugoslav embassy and is directly followed by a two-paragraph report on a plot to assassinate the 'Iraki' (*sic*) prime minister. The brevity of these latter reports is notable.
20. For details on the comparatively rushed and lax organisation of the Melbourne Games, see *The Official Report of the Organizing Committee for the Games of the XVI Olympiad, Melbourne, 1956* (Melbourne: Government Printer, 1958). The Hungarian water polo team went on to win the gold medal.
 21. The Federal Bureau of Investigation named former police officer and Olympic security guard Richard Jewell as the key suspect: see J. Duncan, 'FBI Scours home of Olympic bomb "hero"', *Guardian Weekly*, 11 August 1996, 3; E.M. Yoder, 'Media Take Law Into Their Own Hands', *Guardian Weekly*, 11 August 1996, 16; L. Lamont and R. Macey, 'Sydney rethinks security plans', *The Age*, 30 July 1996, A6; P. Iyer, 'Lost Magic', *Time*, 5 August 1996, 31; E. Gleick, 'Terror's Venue: Fear casts a gruesome shadow on moments that were meant to be golden', *Time*, 5 August 1996, 33–7. This incident followed the crash of TWA flight 800 off the coast of Long Island attributed to terrorist activity: see P. Gray, 'The Search for Sabotage', *Time*, 5 August 1996, 39–41. See also Sheil (note 15), 53–61.
 22. For an astute tongue-in-cheek critique of this and other hegemonic Olympic philosophies, see the detailed research and accessible presentation of Sheil (note 15).
 23. Australian National Audit Office, *Commonwealth Agencies' Security Preparations for the Sydney 2000 Olympic Games*, Performance Audit Report No.5 (Canberra: Commonwealth of Australia, 1998). This report indicates 12 major federal agencies charged with security roles at Olympic venues and Sydney's international air terminals had virtually no inter-agency liaison with related state enforcement agencies in the build-up to the event.
 24. Freeman is no stranger to acts of protest, with her display of the Indigenous flag alongside the Australian national flag during her 400m victory at the 1994 Commonwealth Games in Victoria, Canada, arousing extensive debate on Australian nationalism and Indigenous rights: see J. Given, 'Red, Black and Gold to Australia: Cathy Freeman and the Flags', in *Sport! Changing the Angle: Media Information Australia 75* (1995), 46–56; Warren and Tsaousis (note 8), 27–53; P. Sheil (note 15), 86–93, sub-headed 'Black Bastards'. The chapter by Sheil is indicative of the creative parody of this text and its protest value: 'If Only Cathy Freeman was a Lesbian ...'.
 25. N. Rothwell, 'Black-lit goes gonzo', *The Weekend Australian: Review: Books Extra*, 27–28 October 2001, 2–3.
 26. Senate Legal and Constitutional References Committee, *Cashing in on the Sydney Olympics: Protecting the Sydney Olympic Games from Ambush Marketing* (Canberra: Commonwealth of Australia, 1995); Olympic Insignia Protection Act, Cth, 1987 subsequently replaced by the Sydney 2000 Games (Indicia and Images) Protection Act, Cth, 1996; Olympic Symbol etc (Protection) Act, UK, 1995. Most confiscated items were donated by the Australian Federal Police to East Timorese nationals after secession from Indonesia with Australian military aid.
 27. M. Robbins, 'Serial Pest shown no goodwill', *The Weekend Australian*, 25–26 August 2001, 3. Hore has disrupted numerous domestic and international events, including the funeral of Australian pop icon Michael Hutchence, the annual Melbourne Cup horserace and various sittings of state parliament. Armed with a video camera, generally topless with a lithe, tattooed body, and often raving in undecipherable language, Hore made a brief appearance during the men's marathon on the final day of Olympic competition. The incident received minimal domestic media coverage, but was pivotal in the decision of a Brisbane magistrate to remand Hore for two months in protective custody to prevent further disruption to the 2001 Goodwill Games and Commonwealth Heads of Government Meeting scheduled for 3 October 2001, subsequently cancelled after security concerns following the events of 11 September.
 28. S. Harris, *Political Football: The Springbok Tour of Australia, 1971* (Melbourne: Gold Star Publications, 1972).



29. During the mid-1980s further confrontation was anticipated with the announcement of a series of 'rebel' cricket tours to South Africa involving elite and semi-retired Australian cricketers. The lack of popular support for these tours ensured the events of the early 1970s were not repeated. For a general discussion of the relationship between sport, nationalism, apartheid and masculinity, see J. Nauright and T.J.L. Chandler (eds.), *Making Men: Rugby and Masculine Identity* (London and Portland, OR: Frank Cass, 1996); Cashmore (note 2), 242–9. See also the New Zealand Court of Appeal decision in *Finnigan v. New Zealand Rugby Football Union Inc* [1985] 2 NZLR 159–208, involving the standing of club members under administrative law to challenge the Union's decision to send a rebel team to South Africa.
30. Given (note 24), 48–50.
31. F. Brennan, *Too Much Order With Too Little Law* (St Lucia: University of Queensland Press, 1983).
32. Twomey (note 9), 76–94.
33. C. Cunneen, M. Findlay, R. Lynch and V. Tupper, *Dynamics of Collective Conflict: Riots at the Bathurst 'Bike Races* (Sydney: Law Book Company, 1989); A. Veno and E. Veno, 'Police, Riots and Public Order', in D. Chappell and P. Wilson (eds.), *Australian Policing: Contemporary Issues* (Sydney: Butterworths, 1989), 132–48; A. Veno and E. Veno, 'Managing Public Order at the Australian Motorcycle Grand Prix' in J. O'Hara (ed.), *Crowd Violence at Australian Sport* (Sydney: Australian Society for Sports History, 1992), 49–78.
34. R. Lynch, 'A Symbolic Patch of Grass: Crowd Disorder and Regulation on the Sydney Cricket Ground Hill', in O'Hara (note 33), 10–48; R. Lynch, 'Disorder on the Sidelines of Australian Sport', *Sporting Traditions: Journal of the Australian Society for Sports History* 8 (1992), 50–75.
35. R. Hay, 'A new look at soccer violence', in D. Hemphill (ed.), *All Part of the Game: Violence and Australian Sport* (Sydney: Walla Walla Press, 1998), 41–62; I. Warren and R. Hay, 'Order and Disorder at Sporting Venues', in *ibid.*, 63–85.
36. The Ombudsman Victoria, *Report of the Investigation into Alleged Failure of State and Local Authorities to Ensure Adequate Provision of Public Transport and Environmental Health Standards at the 'Guns n' Roses' Concert at Calder Park Raceway, 1 February 1993* (Melbourne: Government Printer, 1993).
37. S. Rintoul, 'Political Foot Brawl', *Weekend Australian*, 12–13 May 2001, 22.
38. This incident has many international parallels, including the Bosnich 'Nazi' salute and the reaction by Manchester United star Eric Cantona to racial taunts leading to a nine month ban and considerable debate over racism among Premier League supporters: S. Greenfield and G. Osborn, 'When the Whites Go Marching In? Racism and Resistance in English Football', *Marquette Sports Law Journal* 6/2 (1996), 315–35; Warren and Tsaousis (note 8), 27–53.
39. See generally D. Headon (ed.), *The Best Ever Australian Sports Writing: A 200 Year Collection* (Melbourne: Black Inc, 2001), 5–12. These extracts highlight the extent of popular attraction to organised pugilism dating back to 1814 and illustrate the level of public resistance to the legal suppression of prizefighting by colonial authorities.
40. G. Gardiner, 'Racial Abuse and Football: The Australian Football League's Racial Vilification Rule in Review', *Sporting Traditions: Journal of the Australian Society for Sports History* 14/1 (1997), 3–25; Warren and Tsaousis (note 8), 27–53.
41. M. Gunn and D. Omerod, 'Despite the Law: Prizefighting and Professional Boxing', in Greenfield and Osborn (note 2), 51–68.
42. B. Beddoe, "'In the fight': Phenomenology of a Pugilist', in Hemphill (note 35), 133–9; M. Burke, 'Is Boxing Violent?: Let's Ask Some Boxers', in *ibid.*, 111–32.
43. N. Wilson and S. Phillips, 'Anti-US Mundine pounded', *Herald Sun*, 23 October 2001, 3.
44. See Wilson and Phillips (note 43); M. Butler, 'Grieving twin hurt by boxer's views', *Herald Sun*, 23 October 2001, 3; D. Mason and M. Maguire, 'Muslim leader backs The Man', *Australian*, 23 October 2001, 1–2. See also 'Mundine pounded by US', *MX*, 23 October 2001, 5.
45. G. Lally, 'Mundine loses WBC ranking', *Herald Sun*, 26 October 2001, 9; R. Guinness,



- 'Mundine stripped of points', *Australian*, 26 October 2001, 45; R. Neill, 'Notoriety is no substitute for credibility', *Australian*, 26 October 2001, 13; 'Australian boxing in Mundine corner', *MX*, 26 October 2001, 18; B. Kimber, 'Mundine's tilt at world glory cops blow', *Age*, 26 October 2001, Sport 3.
46. Mundine was defeated by knockout in the tenth round against Sven Ottke. See J. Hooper, 'I had him beaten, declares Mundine', *Herald-Sun*, 6 December 2001, 88; APP, 'Mundine says his talents are limitless', *The Australian*, 10 December 2001, 21.
 47. Sheil (note 15), 37.
 48. See generally J. Hocking, *Beyond Terrorism: The Development of the Australian Security State* (St Leonards: Allen and Unwin, 1993).
 49. See generally D. Brown, D. Farrier, D. Neal and D. Weisbrot, *Criminal Laws: Materials and Commentary on Criminal Law and Process of New South Wales*, 2nd edn. (Sydney: Federation Press, 1996), 909–1023.
 50. This criterion is central to ensure police power to respond to incidents threatening state peace and security. However, the content of the term varies considerably in each Australian state. In Victoria the relevant provisions can be found in the Summary Offences Act, Vic, 1966, s.3, which lists 16 locations classifiable as a public place, including roads, public gardens, railway facilities, public schools, markets and 'any race-course cricket ground football ground or other such place' whether or not admission is required. Under the Crimes Act, NSW, 1900, s.8, reference is made to equivalent definitions in any relevant act of parliament or administrative ordinance, and includes 'a public place, or open and public place, or place of public resort' even if the location is ordinarily private.
 51. Crimes Act, Vic, 1958, s.320. The statutory maxima are five years for affray, common assault, rout and unlawful assembly, and ten years for riot.
 52. Unlawful Assemblies and Processions Act, Vic, 1958, ss.6, 11–12.
 53. *Ibid.*, ss.7, 10.
 54. *Ibid.*, ss.13–21.
 55. *Ibid.*, ss.27–55. Part IV provides for magisterial appointment of a grand jury with majority verdict powers, and a public Commissioner to determine the factual merit of compensation claims.
 56. Crimes Act, Vic, 1958, ss.206–7, 316.
 57. Crimes Act, NSW, 1900, s.93E.
 58. *Ibid.*, s.93B(5) and s.93C(1)–(5) (affray).
 59. *Ibid.*, s.93D.
 60. See also *ibid.*, s.545C, which prohibits knowingly joining or continuing an unlawful assembly or attending such incidents armed with any weapon likely to cause death or grievous bodily harm. An unlawful assembly is defined in s.545C(3) as '[a]ny assembly of five or more persons whose common object is by means of intimidation or injury to compel any person to do what he is not legally bound to do or to abstain from doing what he is legally entitled to do'.
 61. *Ibid.*, s.33, prohibiting wounding with intent to cause harm to resist lawful arrest, s.33B, governing the use or possession of weapons designed to resist arrest, and s.546C, providing a general prohibition on resisting or aiding a person to resist police apprehension or directives; ss.456AA–63B, governing powers of arrest with or without a warrant during the commission of an indictable offence, and specific provisions applicable to transport facilities such as aeroplanes; ss.29–31, which prohibits resisting arrest with firearms, threats of injury and indictable assaults during the commission of an offence. See also Summary Offences Act, Vic, 1966, s.52.
 62. Crimes Act, NSW, 1900, ss.352–57C, which outlines powers of search and seizure and compulsory fingerprinting, photographing and medical examinations of criminal suspects; Crimes Act, Vic, 1958, ss.464–464ZK, extends these procedures and rights for suspects in custody regarding forensic procedures and intimate body samples.
 63. Crimes Act, NSW, 1900, s.547B; Crimes Act, Vic, 1958, ss.317–317A, relating to explosives and bomb hoaxes; Summary Offences Act, Vic, 1966, s.53.
 64. Crimes Act, NSW, 1900, ss.195–202, including actual destruction, threats to destroy and possession or control of items with intent to destroy property; Crimes Act, Vic, 1958,

- ss.197–9, 201, involving property damage and destruction, threats thereby, possession of items with intent to destroy, and defences of lawful excuse.
65. Crimes Act, NSW, 1900, ss.204–14; Crimes Act, Vic, 1958, ss.80, 246A–E, s.469A, governing powers of arrest and search on airlines; ss.232–3, 244, governing railways.
 66. Crimes Act, NSW, 1900, s.31; Crimes Act, Vic, 1958, ss.27–8, covering extortion with threats to kill and destroy property.
 67. Crimes Act, NSW, 1900, ss.60 and 54; Crimes Act, Vic, 1958, ss.16–26, involving threats against the person and related conduct endangering life. See also Summary Offences Act, Vic, 1966, ss.23–4, governing common and aggravated assaults triable summarily.
 68. Crimes Act, NSW, 1900, ss.545D–E. See also Dangerous Goods Act, Vic, 1985; Dangerous Goods Act: Classification of Explosives Order, Vic, 7 July 1988, covering the unlawful possession and discharge of flares in public or private places.
 69. Crimes Act, Vic, 1958, ss.248–52.
 70. Crimes Act, NSW, 1900, s.547.
 71. Crimes Act, NSW, 1900, Part 9, ss.345–51, 546, applicable to summary offending; Crimes Act, Vic, 1958, ss.321–321F (conspiracy); 321G–L (incitement); 321M–S (attempts); 323–39 (aiding and abetting); 363, governing the joinder of accessories in criminal proceedings.
 72. See also Summary Offences Act, NSW, 1988, ss.4–4A, governing offensive conduct and language.
 73. See *R. v. Close* [1948] VLR 445; *Wren v. Hardy* [1951] VLR 256–67; *Wavish v. Associated Newspapers Ltd* [1959] VR 57–64; *Mackay v. Gordon & Gotch (Australasia) Ltd* [1959] VR 420–29; *Buckley v. Szardurski* [1973] VR 28–38; *Buckley v. Wathen* [1973] VR 511–16; M. Pollack, *Sense and Censorship: Commentaries on censorship violence in Australia* (Sydney: Reed Books, 1990), indicating most censorship actions are subject to private claims under the laws of defamation. See also Crimes Act, Vic, 1958, s.469AA, enabling the Victoria Police to seize documents containing libellous content.
 74. Summary Offences Act, Vic, 1966, ss.4–5, 7–11; Summary Offences Act, NSW, 1988, ss.5–11, 28, prohibiting violent disorder in public places involving three or more persons acting in concert.
 75. Summary Offences Act, NSW, 1988, ss.22–7. See also Public Order (Protection of Persons and Property) Act, Cth, 1971, establishing similar procedures for the authorisation of lawful assemblies and almost identical enforcement powers for the Australian Federal Police to identify and prevent disorderly conduct on Commonwealth premises, including consular and diplomatic offices and related federal sites. The Act also contains extensive powers to identify and disband associations or groups engaging in conduct threatening national security.
 76. See Melbourne Cricket Ground Acts, Vic, consolidated version, 25 July 1996, incorporating Melbourne Cricket Ground Trust Act 1989, Melbourne Cricket Club Act 1974 and Melbourne Cricket Ground Regulations 1994.
 77. See also Private Agents Act, Vic, 1966, and regulations thereunder requiring compulsory training and registration for all private agents undertaking crowd control and security functions overseen by the Victoria Police.
 78. See Sydney Cricket and Sports Ground Amendment Act, NSW, 1997, inserting s.24A into the Sydney Cricket and Sports Ground Act, NSW, 1978, providing maximum fines of \$5,000 for pitch invasions, and Sydney Cricket Ground and Sydney Football Stadium Amendment (Offenders) By-law 1997, cl.15A, governing exclusion orders. For an extensive review of these and related extensions of public order laws directed at security for Sydney 2000 see M. Head, ‘Olympic Security’, *Alternative Law Journal* 25/3 (2000), 131–5; M. Head, ‘Sydney Olympics used as “catalyst” for permanent military powers over civilian unrest’, *Alternative Law Journal* 25/4 (2000), 192–5.
 79. C. Davids and L. Hancock, ‘Policing, Accountability and Citizenship in the Market State’, *Australian and New Zealand Journal of Criminology* 31 (1998), 38–68 and references therein.
 80. See for example Senate Finance and Public Administration References Committee, *Contracting out of Government Services*, 2nd report (Canberra: Parliament of the

- Commonwealth of Australia, 1998).
81. The first event was held at the venue in 1996.
 82. A. Atwood, 'Death in the Afternoon: A Sunday Age Investigation', *Sunday Age*, 29 April 2001, 1–8; A. Attwood, 'Safety overhaul for GP', *Sunday Age*, 29 April 2001, 1.
 83. See also Indy Car Grand Prix Act, Qld, 1990, and regulations thereunder; Australia Formula One Grand Prix Act, S.A., 1984.
 84. Australian Grands Prix Act, Vic, 1994, s.7.
 85. *Ibid.*, ss.8–9.
 86. *Ibid.*, ss.20(c), 21(a)–(b).
 87. *Ibid.*, ss 36, 39, 41, 46. Under s.41, no compensation is payable for any authorised improvements affecting local residents or businesses.
 88. See generally *ibid.*, ss 20–1.
 89. *Ibid.*, ss.40, 44–5.
 90. See generally *ibid.*, s.3. Once refurbishment of the site commenced, several reports from protesters highlighted disquiet over a tactic adopted by the Victoria Police to erect temporary fences around demonstration areas aimed at preventing the entry of machinery and building workers into the park. The intention was to threaten protesters with criminal liability for trespass and encourage their removal from the venue. The author has been unable to find any litigated cases in criminal or civil reports dealing with this issue.
 91. *Ibid.*, s.51.
 92. See *Pandavopoulos (sic) v. Australian Grand Prix Corporation* (Victorian Civil and Administrative Appeals Tribunal, unreported judgment, 1996/05304, 31 March 1997), involving a successful claim by John Pandavopoulos MP to obtain sponsorship documents under freedom of information laws; I. Warren, 'Corporate Governance, Masculinities and the Superleague Case', in D. Hemphill and C. Symons (eds.), *Gender, Sexuality and Sport in Australia* (Sydney: Walla Walla Press, forthcoming).
 93. Cf. The Olympic Games Act, Vic, 1955, which contained no express statement of the legal status of the Melbourne Organising Committee for the 1956 Olympic Games. The Games in Melbourne were secured by tripartite agreement between the IOC, the Melbourne Cricket Club Trust as owner of the Melbourne Cricket Ground (MCG), and the Organising Committee prior to enactment. Section 4(a) gave legal effect to the agreement, 'and neither the Agreement nor any act or thing done in the due and proper performance thereof shall be called in question or challenged in any proceedings in any court'. Section 4(b) stipulated the MCG Trust's power to alter venue regulations to facilitate the Games, and permitted additional regulations for the collection of entrance fees, the preservation of public order and fines for breaches of stadium regulations. Section 5 provided an appropriations procedure for Games works through local government revenue, and the state government could guarantee loans of less than £200,000 from consolidated works under s.6. See also Note 20.
 94. For a popular cultural parody of the corporate elements of Sydney 2000, see J. Clarke and R. Stevenson, *The Games* (Sydney: Australian Broadcasting Corporation, 1999).
 95. 2 Camp 358–9; 172 ER 1183–7; 11 Rev. Repts 731–41.
 96. H. Cunningham, *Leisure in the Industrial Revolution c.1780–1880* (London: Croom Helm, 1980).
 97. In the state of Victoria, the privatisation of governance functions during the 1990s was extensive and had profound effects on the domestic political and natural environment. The net effect has been the considerable erosion of democratic participation in the local political process, at the expense of professional, corporate development to enhance tourism and other external interests. For prominent legislative examples, the source of considerable protest activity and the erosion of basic rights to participate in the democratic process at local level, see Coastal Management Act 1995; Docklands Authority Act 1991; Planning Authorities (Repeal) Act 1994; Project Development and Construction Management Act 1994; Southgate Project Act 1994; and see in particular extensive amendments to the Local Government Act 1989, especially s.208, which stipulates 50 per cent of local government revenue and business must be generated through competitive tendering regimes with Australian and New Zealand corporations. This development has had numerous effects on

the privatisation community services, including public libraries, now required to present annual business plans and solicit competitive private sector revenues for core operational funding. While no research has been commissioned into the practical effect of these reforms, it seems local councils in regions with profound social dislocation, unemployment and diverse migrant populations have been worst affected by these reforms.

98. Cunningham (note 96).
99. Osborn (note 2), 62–4.
100. See also M. Fitzgerald, G. McLennan and J. Pawson, *Crime and Society: Readings in History and Theory* (London: Routledge and Kegan Paul in association with Open University Press, 1981).
101. Dicey (note 10).
102. ‘The evil of the worst period of municipal corruption had become well nigh intolerable for a long course of years. The corporate officers elected and re-elected themselves and each other for ever; the trust funds which should have healed the sick, and sheltered the old, and instructed the young, were employed in bribing a depraved class of electors; the functionaries made the constituency, and the constituency in return appointed the functionaries; so that if a sufficient number of corrupt and indolent men could be got into league, they could do what they pleased with the powers and funds of the borough. To those who felt that the welfare of a nation depends on its public and private virtue, who saw that the private vice of a community was found to be in substantial accordance with its municipal corruption, and who looked back through this avenue of history so as to perceive how low our people had sunk from the municipal freedom and purity of long preceding ages, it was consolatory to read the bold exposure made by the commissioners who had been appointed to inquire into the giant abuses. They report: “Even where these institutions exist in their least imperfect form, and are most rightfully administered, they are inadequate to the wants of the present state of society. In their actual condition, where not productive of evil, they exist, in a great majority of instances, for no purpose of general utility. The perversion of municipal institutions to political ends has occasioned the sacrifice of local interests to party purposes, which have been frequently pursued through the corruption and demoralization of the electoral bodies. There prevails among the inhabitants of a great majority of the incorporated towns a general and, in our opinion, a just dissatisfaction with their municipal institutions, a distrust of the self-elected municipal councils, whose powers are subjected to no popular control, and whose acts and proceedings being secret, are unchecked by the influence of public opinion; a distrust of the municipal magistracy, tainting with suspicion the local administration of justice, and often accompanied by contempt of the persons by whom the law is administered; a discontent under the burthens of local taxation, while revenues that ought to be applied for the public advantage are diverted from their legitimate use, and are sometimes wastefully bestowed for the benefit of individuals, sometimes squandered for purposes injurious to the character and morals of the people. We therefore feel it to be our duty to represent to your majesty that the existing municipal corporations of England and Wales neither possess nor deserve the confidence and respect of your majesty’s subjects, and that a thorough reform must be effected before they can become useful and efficient instruments of local government”’, Dr E. Fischel, *The English Constitution*, translated from 2nd German edition by R.J. Shee (London: Bosworth and Harrison, 1863), 332–3.
103. Department of Justice, *Exposure Draft Bill and Community Discussion Paper: Peaceful Assemblies* (Melbourne: State Government of Victoria, July 2001), i.
104. Peaceful Assemblies Bill 2001, cls.5(3), 6–8. Discussion of the proposal has been held over to the autumn 2002 session of state parliament in light of immense public division over these proposals: see X. La Canna, ‘Anger at new law to stop protests’, *Sunday Age*, 29 July 2001, 10.
105. I. Warren, ‘An Air of Uncertainty: private security regulation in Victoria’, *Deakin Law Review* 2/2 (1995), 223–53 at 236–7.
106. The Ombudsman, Victoria, *Investigation of police action at the World Economic Forum demonstrations, September 2000: Report of the Ombudsman* (Melbourne: Government Printer, June 2001).