

## BOOK REVIEW

## Courts and Judges on Trial: Analysing and Managing the Discourses of Disapproval

Pamela D. Schulz (2010). Berlin: Lit Verlag, ISBN 978 3 643 10621 6, paperback, 290 pp.

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doi 10.1017/cha.2012.40

This book is a broad-ranging and in-depth discussion of the relationships between courts, politicians and the media. The author combines her practical experience gained as the first public relations and information officer with the Courts Administration Authority in South Australia with her in-depth research as a communications analyst. This has revealed much of interest about the motivations and methods of journalists, politicians and judges in the swirling manipulation of notions of law and order. This has implications for community confidence in the court system and the rule of law in modern democracies. She concludes by offering some practical solutions to the problems she has identified.

Courts have no direct power over citizens and merely mediate executive power by validating arrest on charges, authorizing the exercise of the power of fining or imprisonment, and quantifying and collecting judgment debts. To perform their work effectively, courts depend upon the confidence of the public in the judicial process. There are very few judges, and relatively few cases, especially in the common law system, so the overwhelming source of information for the general public about courts is the media. Yet the media selects the bizarre and sensational rather than the serious. As Schulz says, '[i]f it bleeds, it leads', and content is selected on the basis of the 'four Cs': courts, cops, crime and conflict (p. 4). She contends that in a developed world of relative safety, the media and politicians have created a climate of fear of violent crime to prop up their relevance. Crime is depicted as a major problem and 'tough on crime' is the simplistic solution. Part of this process is to make stories newsworthy by finding cases where there is discontent about the result, which is then inflated as part of a discourse of disrespect against the judicial process as a whole. Straight reporting is demoted in importance in preference to conflict, problems and simplistic answers.

Schulz develops her discussion through the discipline of critical discourse analysis. This is a communications study method that looks for the sometimes unstated meanings in communications by seeking patterns of words and phrases and their proximity to each other and, conversely, by what is systematically avoided or suppressed. She identifies a gen-

eral discourse of *disapproval* of courts in the media that has developed into discourses of *disrespect*, *diminution* and *direction*. This leaves judicial officers feeling marginalised and threatened, whilst politicians have joined in so that they can be seen as saviours fighting the problem, which is largely a media construct. Schulz identifies the use of the technique of 'othering' by which a small group is branded and demonised so that the majority can find a sense of unity in coming together with a sense of rectitude to eject them. This technique, of course, has a long and unhappy history, and the marginalization of the judiciary has always been a first step in the process. In this instance, the technique has been applied first to criminals who should be 'locked away for longer' and to judges who fail to do this to them.

Her interviews of politicians demonstrate a disconnection between their stated understanding of and commitment to the rule of law and the independence of the judiciary. At the same time, politicians think that the courts need "direction" from them to address changing community standards, especially in sentencing matters, which are the fodder of the press (p. 46). They acknowledge that the judicial role is not to be popular but to apply the law 'without fear or favour, affection or ill will' (Oaths Act 1936 (SA), s11). Although politicians acknowledge the central importance of judicial independence in interviews with the author, she demonstrates that the same approach is often not reflected in public comments made to the media. Whilst it is the work of courts to make nuanced decisions in controversial cases, when they do, this has sometimes been described as 'an unelected and unaccountable judiciary usurping power' (p. 159). Politicians do emphasise the need for the language of law and judgments to be accessible, and from their comments the author identifies the need for a 'media judge' to enter the media arena on behalf of the judiciary to explain their decisions.

She has assessed the view of the judges using discourse analysis of both interviews of selected judges from all levels of the judicial hierarchy in Australia and their speeches. What emerges is a primary concern about independence; and parallel to this is an inevitable tension between the judges' need to have a relationship of confidence with the

community and politicians and the isolation which is inherent in their role. They feel misrepresented and misunderstood.

Schulz uses Foucault's approach to power to suggest that the widespread formation of a negative response is indicative of an emerging challenge to power, which she sees as a challenge by elected government to the authority and independence of the judiciary. Who is leading this dance between the media and the politicians is uncertain, but at this ball the judiciary is the wallflower, which, in any case, would traditionally refuse to dance in this 'infotainment' world of the modern media. Not to be involved in the discourse is not to exist and to risk the loss of relevance, power and the independence that is so valued by the judiciary. At the same time, discourse analysis shows a judiciary that is protective of its own methods and unwilling to involve itself in public controversy. The author recognises that a commitment to a rule of law is bound to lead to unpopular decisions. Indeed, it is the judiciary that stands between a tyranny of the majority and populist oppression as they moderate the exercise of governmental power. But many of them, as is typical with the marginalized 'other', feel powerless and are defensive.

Schulz concludes that in the face of headlines about a court judgment such as 'THIS IS NOT JUSTICE – THIS IS A DISGRACE', the present role of a journalist information officer – which entails ensuring accurate information is supplied to media, holding court open days, giving school tours, and speaking at community events and the like – is not sufficient. She says a fully integrated and sustained communications strategy is required, starting with using discourse analysis to identify the misconceptions that need to be countervailed.

To address these misconceptions, the author would have press judges who do not sit so they can engage in discussion of public controversies, and communication managers who ensure courts do react effectively to community concerns and express themselves so that they are understood. A range of other measures, such as a road show to showcase the sentencing process, direct access to the community through cameras in courts, and interactive websites, are recommended to make the work of courts accessible and provide contextual information for the few cases the media choose to highlight. Judicial participation and knowledge of discourse analysis is also suggested to further ideas for better communication.

Courts must accept valid criticism and be prepared to remedy properly identified problems. However, Schulz's focus is on the damaging discourse about courts that involves criticism for ulterior purposes and is not based on any merit. Media discourse reformulates rather than reflects reality as the media competes with executive government and the judiciary to represent justice and the common good. Political and media use of law and order rhetoric undermines public confidence in courts and the rule of law that it masquerades as discussing.

This book relies mainly on research from Australia, but the author also includes material from the UK, USA, Canada, India and Europe, thereby giving the book broad international relevance to foster discussion in this important area. It is scholarly but readable, so the book will serve both as a text for general interest as well as a course book in progressive law schools and communications faculties.