

**Brian Walters, *Slapping on the Wrists: Defamation, Developers, and Community Activism*, Sydney, University of New South Wales Press, 2003**

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Despite the suggestion of a double-barrelled pun in the title (a slap on the wrist? Puttin' on the Ritz?), Brian Walters' book is no laughing matter. In a crisp, densely-packed and tightly-argued 95 pages, the author — a prominent Melbourne barrister and leading civil libertarian — walks us through the fractious world of SLAPP, a US-coined acronym for strategic litigation against public participation. What it means in formal terms is 'a civil complaint or counterclaim for money damages filed against a private citizen or citizen groups who are targeted because of their communications to a government body or official or to voters in a community on an issue of public interest or concern' (2003:8). What it entails in practice is the issuing of a writ using extant legislation (sometimes the *Trade Practices Act*, more usually defamation laws) by the politically or financially powerful (typically large corporations) against the relatively powerless (invariably NGOs, community action groups, a critical citizenry). Walters' concern is specifically with the muzzling of public debate in Australia and, at a broader level, the inherent threat to universal democratic principles this represents.

At the heart of the book is a set of eight case studies. Despite their particularities, a chilling pattern quickly emerges. Whether the issue is casino construction in Melbourne, extension of business premises in residential Marrickville, building a bridge on Hindmarsh Island or a proposed resort at Oyster Point, public protest is effectively derailed when SLAPP writs are served on critics by lawyers acting on behalf of aggrieved developers. While morally dubious, such a tactic is effective on several grounds. Walters notes that the complexities of defamation laws are not well understood by any bar the initiated in the legal fraternity, and are well nigh incomprehensible to the layperson. Moreover, any impending suit shifts the focus from the issue that provoked it: to their campaign's detriment, protesters must deal with the high personal and pecuniary costs of a legal defence and the prospect of a lengthy period in the courts. Finally, what tips an already heavy advantage for litigious developers into a virtual no-contest is the legal status of the corporation relative to the defendants in the action: whatever the outcome of the case, because it impacts on their operations, profit margin and reputation, developers can recoup any costs incurred in the suit as a legitimate business expense and claim it back as a tax deduction. Seldom can the old adage 'one law for the rich, another for the poor' have been so clearly validated.

The situation as described is outrageous and, while in no way resorting to mere polemics, Walters is clearly outraged. He reminds us that Australia provides particularly fertile soil for SLAPP writs to survive and thrive, because here 'there is no constitutionally recognised right of free speech (and, not entirely coincidentally, Australia is now the only Western nation without a bill of rights)' (2003:53). And as an at least partial remedy to bring Australia into line with what he characterises as more free speech-friendly jurisdictions such as the UK and the US, he not only demystifies defamation law for the general reader but proposes his own legislative solution in his Protection of Public Participation (POPP, perhaps?) Bill.

*Slapping on the Wrists* tackles a topic of vital importance. While Walters is clearly passionate about his subject matter and, for this reviewer at least, is clearly on the side of the angels, he adopts a measured tone throughout, and the book is a model of clarity and

concision. This is not to say that there are no elements present that may give the reader pause: one wonders at the benign treatment accorded to Britain and North America relative to Australia in this context, given that SLAPP was originally a US initiative, and the UK court's handling of the long-running and notorious McLibel case; the use of terms like 'community' and 'democracy' also sometimes smacks of an 'us vs. them' approach which overly simplifies the tension between libertarian principles and a neo-liberal institutional agenda; and there's a certain ambivalence around the precise role played by lawyers, legislators and the courts, who are at once a major *cause* of the problem, yet also touted as key players in a potential *solution*.

These cavils are, however, primarily cosmetic. They do not seriously detract from the power, timeliness and tone of Walters' critique. At once engaged and engaging, *Slapping on the Writs* deserves to be afforded required reading status, not only for developers, legislators, lawyers and activists, but --- and especially in the present political climate --- that mythically-invoked, much-maligned, at-risk endangered species, the public at large.

## Warren Sproule

Lecturer, School of Sociology and Social Work, University of Tasmania