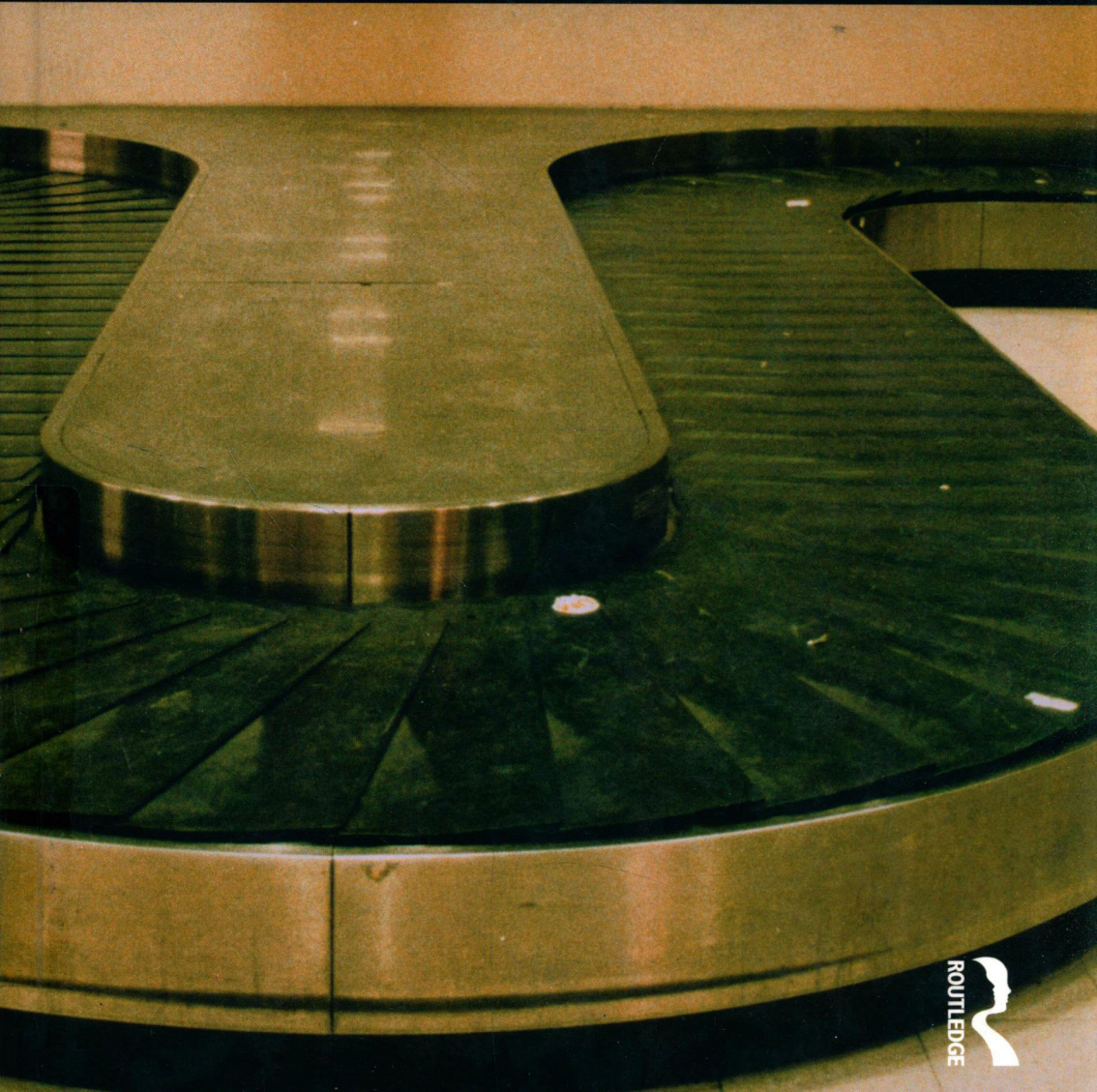


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FROM HERITAGE TO TERRORISM

REGULATING TOURISM IN AN AGE OF UNCERTAINTY

BRIAN SIMPSON AND
CHERYL SIMPSON



ROUTLEDGE

From Heritage to Terrorism

Regulating tourism in an age
of uncertainty

Brian Simpson and Cheryl Simpson



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From Heritage to Terrorism

Critical in style, *From Heritage to Terrorism: Regulating Tourism in an Age of Uncertainty* examines the law and its role in shaping and defining tourism and the tourist experience. Using a broad range of legal documents and other materials from a variety of disciplines, it surveys how the underlying values of tourism often conflict with a concern for human rights, cultural heritage and sustainable environments.

Departing from the view that within this context the law is relegated to dealing with the 'hard edges' of the tourist industry and tourist behaviour, the authors explore:

- the ways that the law shapes the nature of tourism
- the need for a more focused role for law in tourism
- law's potential (and limitations) in dealing with tensions in tourism such as the panic created by the spread of global terrorism.

Addressing a range of fundamental issues underlying global conflict and tourism, this topical book is an essential read for all those interested in tourism and law.

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Preface

The idea for this book grew from the course Law, Tourism and the State taught at Flinders University of South Australia by Brian Simpson from the late 1990s until his departure to take up an appointment at Keele University in the United Kingdom in 2002, and then by Cheryl Simpson from 2003 until 2005. The aim of that course was to engage in a critical examination of the law as it affected, and was affected by, tourism. Importantly, this was done in the context of the Legal Studies Discipline at Flinders University which we believed could provide an interdisciplinary and critical approach to the study of legal phenomenon. Unlike Law Schools, our view was that Legal Studies was not hampered by the narrow confines of professional admission requirements and the perceived need to address the 'practical' at the expense of the 'theoretical'. The existence of a course in Law, Tourism and the State at Flinders was itself some evidence of that, as to the best of our knowledge it is not an area of study in any Law programmes in this form. At the time of its creation, it was felt that a critical examination of tourism and its intersection with law would provide more useful insights into how the law in this area 'works' (and does not work) than a more standard (and dry) discussion of the laws which govern the tourism industry.

This background is of central relevance to the content of this book as from the outset we wish to make it clear that this is *not* a book about the manner in which the law regulates travel and tourism. If we were to explain the focus of this book in a few words it would be to say that it is an attempt to explore how law thinks about tourism. For the most part, and with few exceptions, we feel this is a neglected part of tourism studies for the simple reason that it is also a neglected part of law studies. Law tends to compartmentalise itself into 'areas' (such as contract, torts, property, crime) and has difficulty with subject matter that 'cuts across' these boundaries. In our view the connections which courses such as 'law and tourism' both demand and permit have the potential to make the study of law more relevant and interesting. From the perspective of tourism studies, where there is an absence of a body of scholarship in this intertwined area it would be unreasonable to expect tourism scholars to have much to say about law as a part of how

tourism is constructed. This lack of breadth in writing on 'law and tourism' appears to be a significant gap in the field. We hope that this work aids in changing that a little.

However, the absence of much intersectional work on this point does present many difficulties, not least the dearth of material which might make those connections to which we have referred as important to make between the two disciplines. This has made our task at times arduous. There are discussions of tourism and power which come close to issues attached to law,¹ but even they acknowledge that in this related area there is much work to be done in tourism studies. As Andrew Church and Tim Coles have written, 'tourism studies still lack a full appreciation of the state's current role in relation to tourism and hence its power'.² This is comforting for us who stand outside the discipline of tourism studies attempting to discern the state of play in that other area of expertise. On the other hand it is daunting for the challenge it presents in attempting to provide a fresh perspective to that area of study. On the law side we hope that our approach and the literature presented opens up some new insights (and authors) for law scholars, although we appreciate that there is always a danger in interdisciplinary work of falling between two stools. For taking the risk we make no apologies.

This leads us to methodology. Our approach is eclectic and 'inter-jurisdictional'. In this we mean that we feel free in our approach to roam wide to establish continuities and discontinuities in order to discover how law thinks about tourism (and vice versa). This does mean that we cannot be bound to one jurisdiction, nor do we take an orthodox approach to what might constitute 'law'. Although we refer to some legislation and cases, the reality which we met in first teaching in this area was that in fact there are few actual laws that direct themselves to tourism *per se*. More importantly, many of the issues that concern those of us interested in the social and cultural impacts of tourism are not really addressed by law at all, but are contained in aspirational statements by international organisations, codes of practice and government strategies and discussion papers. These documents often construct a discourse which impacts hugely on how people interact with respect to tourism and its consequences and we feel that in this sense there is a strong argument that these are the 'laws' which affect people and so in effect regulate their behaviour in many areas of tourism. Of course, one aspect of this is the various international treaties and resolutions which relate to tourism. This body of international law is no doubt law in a more classical sense, although for some lawyers the inability to enforce such laws domestically renders them mute. Gladly, the legal system is moving away from such a narrow approach to the value of international law, but leaving aside that debate taking place within law, they still reinforce the manner in which regulation takes place in tourism – much of it is by way of a 'legal' discourse which is as much constructed by non-lawyers as it is by lawyers.

Finally, we would comment on the title of the book. In using the title *From Heritage to Terrorism* we wished to identify tourism as a diverse and contradictory area to regulate. It also suggests that a large area lies between issues of culture and identity and issues of death and destruction. At the same time there is a connection: terrorism is sometimes motivated by disputes over the value of particular views of which values should be retained and heritage preserved, while the keepers of our heritage often have to decide if past atrocities are to be part of the history that society should remember. In the middle of this sits the law, often called on to mediate a solution and find a position that allows such matters to be decided and permit society to still cohere. Of course, from a more critical perspective it may be that law is a device used to blur the issues, disguise the interests of the powerful and resolve the matter by way of a smokescreen built around rhetoric and the clever use of language. This in turn alludes to our concern with social injustice and inequality. While we hope we are detached sufficiently to ensure objectivity in our discussion, we also are of the view that any study of law should be informed by a concern for human dignity and respect. What is often found in the law's construction of tourism is a number of competing and conflicting views about the role of tourism, manipulated by powerful interests and resulting in little concern for the poor. The law has much to do in this area of tourism.

This is also the point at which the 'age of uncertainty' arises. We live in a time where from the vantage point of post-modernism there are no absolutes. At the same time, politicians and 'shock jocks' who provide simple solutions to complex social issues have high popular appeal. Confronted by terrorism, the mass movement of people around the world as refugees and tourists, and amid anxieties about identity at a number of levels, we all live in a world that seems uncertain and insecure. For a moment in the 1990s it seemed that international concern with tourism and its connection with human rights, poverty and social injustice might prevail over other concerns. Now all this seems uncertain as we deal with the fear generated by terrorism, climate change and pandemics. The question that seems to arise here is whether the law is to be used to maintain a position of respect and tolerance for others, or is to be corralled into protecting the status and privilege of the rich and powerful. In this context the law is but a tool that can only be understood in the hands of those who control it. Perhaps in this book we present some means to understand this process.

This then is our project and our aim in writing this book. We thank the many students from Flinders University who participated in Law, Tourism and the State over the years that it was taught by each of us. Without their input and thoughts this book would not exist. We also thank our respective partners and families for their support and encouragement and who, as always, make significant sacrifices to allow us to write.

We also thank the hotel housemaid who one of us met on our travels during the time this book was being written. Working in Sydney, she had

come from Nepal, as she said, to provide her children with opportunities she perceived would be available to them in Australia, while indicating that her country was a beautiful place to visit. As she told her story it became apparent that here was part of the reality of modern tourism – women migrating, then commuting from outer suburbs to work long hours making other people's beds for a fraction of an academic's salary in order to advance her children's future, while still professing a deep pride for her country of origin and its culture. We hope that in writing this book we also do her story some justice.

Notes

- 1 See, e.g., A. Church and T. Coles (eds) *Tourism, Power and Space* (London, Routledge, 2007).
- 2 A. Church and T. Coles, 'Tourism and the many faces of power' in Church and Coles, *Tourism, Power and Space*, p. 278.

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Part I

Law in tourism

Conceptualising tourism and the tourist as a legal problem

The exotic holidays, which were becoming increasingly attractive to British tourists, may seem less so in a rather more dangerous world. This represents a real opportunity for the British tourism industry to sell its benefits to the British people. The more exotic holidays may also be less tempting to some of the foreign tourist markets, and we may also attract them. Most importantly, the British tourist industry and the relevant agencies should use this year to attract British tourists back to holidaying in Britain.

(Lord McNally, House of Lords, Hansard, 30 April 2003)

Tourism can bring pollution, traffic congestion, overcrowding, and sometimes downright environmental damage. The income generated by tourists all too often does not stay in the local area but is siphoned off to other areas, so local people are not benefited.

(Lord Patten, House of Lords, Hansard, 30 April 2003)

Tourism as a social phenomenon and as an area of state policy is rife with contradictions and confusion. Urry writes that the consumption of leisure activities ‘cannot be separated from the social relations in which they are embedded’.¹ It should be no surprise then to discover that the laws and policies which seek to regulate tourism reflect the numerous tensions and other sources of social conflict present in society. While the more popular view of law in relation to tourism is to see it as a facilitator of both tourism and the business of tourism, our project is to present it as part of the ‘problem of tourism’. By this we mean the manner in which tourism reflects power differentials in society and thus becomes a constantly shifting phenomenon which at different times takes on different and often opposed objectives. In this process the law does not become a mechanism for clarifying tourism, but instead becomes a force for disguising, concealing and thwarting the aims of different interests in relation to tourism.

The title of this book also speaks to the ‘age of uncertainty’ in which we find ourselves. While for many this had an apparent beginning with the events in New York City in 2001 (what has come to be known simply as ‘9/11’), it is clear that that day was more of a continuation of a process that

had already begun in modern society. The age of uncertainty in travel and tourism did not begin in September 2001; it was merely underlined on that day, regardless of the fact that some airline security measures may be traced from the events on that day. Chris Rojek had already outlined in 1993 how tourism had been transformed in ways that reflected growing unease and anxiety in modern times. As he wrote then, 'de-differentiation has weakened the contrast between home and abroad'.² Mass tourism has come to ensure that travel is underpinned by a 'sameness' wherever one goes, thus creating a certain amount of confusion about where one is actually 'located' at any point in time.³ Yet Rojek also appears to acknowledge that there are risks in travelling, perhaps through the 'on streets' encounters of a greater diversity of individuals now present in many urban destinations. In an age of concern with the risks associated with modern life he observed that 'television gives us a window on the world without incurring the risks and inconveniences that beset the traveller and the tourist'.⁴

For Rojek modern life is characterised by an 'artificiality' which 'creates constant anxieties about the nature of our real feelings'.⁵ It is the shallowness of modern life created by modern consumerism and the dominance of the 'corporate agenda' that lies beneath this anxiety. Rojek argues that 'consumer culture encourages a positive, feel-good, keep fit, acquisitive attitude which marginalizes the traditional question of what life is for'.⁶ One can already see the implications for tourism and fundamental questions about its consistency with equity and non-exploitative practices. As Rojek says, leisure and travel are ways of escape and their popularity reside in that they 'enable us to experience the rapid, hectic controls of Modernity in concentrated form'.⁷ We live in an age where life is 'fast' yet routinised, where we are constantly 'busy' yet have no time for all we want to do, where the ten-second newsgrab has given way to the limited characters allocated on Twitter for what you are currently 'doing'. As Rojek wrote 16 years ago, long before Facebook, Twitter and Smartphones:

... popular leisure activity seems to thrive on fragmentary, contrasting and fleeting experience. Far from demonstrating a reaction to the routines of life as some commentators allege, leisure often involves the intensification and extension of those routines ... Leisure, one might say, is not the antithesis of daily life but the continuation of it in dramatized or spectacular form.⁸

Rojek's analysis may explain the manner in which many tourist attractions now seem to centre on the 'mundane'. How working-class estates can become tourist destinations and how 'shopping trips', for example, are recast as urban experiences and leisure activities. In fact, these are prime examples of how leisure and tourism is able to repackage any experience for consumption while also creating uncertainty about our lives. If work becomes

leisure then where is the divide between our working life and our personal life? In the same way, if a tourist overstays and takes on menial work on low wages in pursuit of a dream of a new life, then is that a logical extension of the travel experience or the corruption of the purpose of tourism?⁹ In a nutshell, where we have come to is the question of what is the purpose of tourism and the law's role in regulating it?

Law and the shifting objectives of tourism

From economic gain to sustainability

In 2003 the Australian Government issued a white paper on tourism policy.¹⁰ This White Paper clearly adopts a business model of tourism which focuses on the need to repackage Australia in order to reap the economic benefits of (hopefully) increased tourism in the future. This culminates in the notion of 'Brand Australia' which is explained as a concept which extends beyond tourism to embrace a combination of Australia's 'spectacular natural environment, the distinctive personality of the Australian people and the free spirited nature of the country's lifestyle and culture'.¹¹ This in turn leads to Australia being described as a 'Platinum Plus' destination, one which will be able to increase its global market share of tourism through exceeding 'customer expectations in terms of the quality and value it provides; it is the concept of providing an exceptional experience with superior standards, from the moment visitors get on the plane to the time they return home'.¹²

The significance of this portrayal of Australia as a 'brand' is that it suggests the complete abdication of the reality and complexity of the nation state to the marketer's hype. As a consequence, those factors which inhibit tourism growth are presented as something apart from and not of the country which is being marketed. Thus the white paper notes that '[w]idespread security and safety fears have changed the environment for travel and tourism and threaten the predicted growth of tourism both globally and locally'.¹³ Yet while on one level tourism is said to be endangered by the threat of terrorism, it is also applauded as a practice which 'provides the opportunity for cultural exchange and fosters understanding'.¹⁴ Tourism may thus also be described as a force which might inhibit the conditions from which terrorism grows.

Clearly, the construction of tourism as being primarily about economic gain distorts the reality of tourism and its more complex connections with society. In this context 'sustainable tourism' becomes not a contradiction in terms, but a clever way of doing business. As the white paper puts it: 'Sustainable tourism is the development of an internationally competitive, ecologically sustainable and socially responsible tourism industry based on an integration of economic, social and environmental objectives and constraints'.¹⁵

Similar ways of thinking about tourism have also evolved in the United Kingdom. In 1999 the Department of Culture, Media and Sport outlined its strategy for tourism into the new millennium. After identifying the immediate benefits of tourism as ‘the opportunity for rest, relaxation, adventure and enjoyment’¹⁶ it states that tourism is much more than this as it ‘generates wealth’, ‘creates jobs’, ‘promotes entrepreneurship’, and ‘provides social and environmental benefits, and supports local diversity and cultural traditions’.¹⁷ This emphasis on the economic benefits of tourism leads to the need to grow the industry, albeit in a sustainable manner. This is never seen as a contradiction or having any real tensions. Thus this paper proposed that local planning authorities understand the

needs of the tourism sector and do what they can to ensure that planning procedures do not constitute an unnecessary obstacle to tourism development. It is equally important that tourism developers appreciate the issues which planners have to face, and that they understand the system and are able to negotiate the complex procedures involved.¹⁸

It also proposed a more co-ordinated national approach to tourism with one body to advocate for tourism including the need to act ‘as a voice for successful sustainable tourism in England’.¹⁹ This translates – in the same vein as the Australian white paper – to a “wise” growth strategy’, that is, ‘one which integrates the economic, social and environmental implications of tourism and which spreads the benefits throughout society as widely as possible’.²⁰ The difference between this and the later Australian document is that here the strategy is to integrate the economic, social and environmental *implications* of tourism, rather than the *objectives and constraints*. The question is whether much turns on the use of language here. It is our contention that much of this is designed to obfuscate rather than clarify how tourism is to be constructed, and that the manner in which documents slide from ‘objectives and constraints’ to ‘implications’ are examples of this.

The problem is that the ‘integration of economic, social and environmental objectives and constraints’ may suggest quite different objectives to different people. As with the notion of a ‘Brand Australia’, the notion that tourism can ‘integrate’ objectives or implications depends on an acceptance that ultimately social cohesion can be achieved. But as Urry suggests in relation to the notion of national icons, such icons are often vigorously contested, such as in his example of Australian bicentennial celebrations being viewed by indigenous people as the celebration of an invasion.²¹ Urry writes of the ‘end of tourism’ focussing instead on the diverse manner in which we all travel. As he puts it, instead of tourism, ‘rather there are countless mobilities, physical, imaginative and virtual, voluntary and coerced’.²²

Taking Urry as a starting point, it seems to us that the important question then is how those laws which purport to regulate, facilitate and control