
PREFACE

The final chapters of this book were completed towards the end of 2009, a year that marked several significant anniversaries in the history of political dissent and peaceful protest. It was 25 years since the miners' strike started and 30 years since Blair Peach was killed by the Special Patrol Group at an anti-racist rally in Southall. *Liberty* had begun life 75 years before, in 1934, as the National Council for Civil Liberties, founded by journalist Ronald Kidd in response to the brutal treatment of Hunger Marchers two years previously. It was a whole 360 years since Gerard Winstanley's Diggers claimed St George's Hill in Surrey during the age of civil unrest in the 1640s. It was also the year, of course, when the media and political discourse turned to the subject, at least from the time of the London G20 summit in April onwards.

Though much of this book was written before the images from the G20 monopolised our screens over the Easter period, I completed and reflected on it in the light of what unfurled. This book, though it is far from being a study of *mass* protests and dissent, cannot now be read without at the very least an awareness of the police tactic of 'kettling' and be read by people who may well have been shocked and distressed witnessing what seemed like gratuitous and wanton violence, even if it was sporadic and out of the mainstream.

In one way this has been incredibly beneficial. The G20 summit, alongside the various inquiries, reports and media attention during the year, has provided a tremendous fillip for this oft-neglected and—certainly in comparison with free speech—underplayed area of public life and public interaction. In this I have been unintentionally assisted by my own tardiness. This book in fact should have been growing dusty on booksellers' shelves long before, sadly, we became aware of Ian Tomlinson and Nicola Fisher. It has had a rather longer than usual, or longer than planned, gestation period for many reasons. This has meant that this is an ideal time to be immersed in the academic legal study of protests and dissent. This book provides the first detailed treatment of the right to protest under the Human Rights Act at a time, like no other in recent political memory, when the need to debate and discuss issues relating to political engagement would struggle to feel more contemporary, more relevant and more pressing.

The G20 though has focussed public attention—and disquiet?—on what are not run-of-the-mill peaceful protest events. One of the points I try to stress in this book is how the legal framework that deals with the seeming social harm of disruptive or disturbing protest is not rational, planned or coherent. It has overlaps or has small gaps that are filled with a massive plug or creates new offences where there is no need, laws that are then used in an unforeseen or unpredictable manner. There is a political tendency to knee-jerkism, reacting to events—the 'need to do something and be seen to do something' attitude; the sort of political attitude that gave us the Dangerous Dogs Act of 1991. Legal responses are skewed by a host of non-legal factors. The problem that the G20 has thrown up and the various inquiries, reports and media attention during the year is that it overlooks the mundane and the everyday: angry parents gathering signatures in the High Street trying to prevent yet another fast food outlet opening or the placard-bearing teenager as the maverick politician

visits their school. *These* are the sorts of events that shape the reality of protest just as much as, and probably more than, half a million members of the Countryside Alliance marching through London for ‘Liberty and Livelihood’ . . . yet it is these that do not make the front pages or the law reports. That last point is important. After all, if the Metropolitan Police gently move a protesting group on, to the far side of a street away from public gaze as *The Guardian* (26 January 2010) alleged was the case in the run up to Tony Blair’s appearance before the Chilcott Inquiry into the Iraq war, and no one brings a case, the right to protest has probably been denied but with impunity.

The New Law of Peaceful Protest has been written for a variety of readers. I hope that interested lay readers will find as much in its pages to stimulate thought and to prompt reflection as the dedicated academic or activist adviser. It has been written with one single aim: to set out a detailed—though not complete or comprehensive—critical account of the state of the law. In doing so I also intended—but it would in any event have been unavoidable had that not been so—to provide that analysis and explanation in context: to note underlying themes or historical development; to see cross-currents and cross-overs; and to consider the impact of the law as it pans and plays out. Those who prefer their law not to be so entirely black-letter will also I hope find reward dotted within its pages. The cover photo was deliberately chosen with that approach in mind. How was Mark Wallinger’s installation *State Britain* able to win the Turner Prize for art in 2007 when Brian Haw’s Westminster peace-camp, of which it is a direct replica, was seen as a ‘demonstration’—so, it was argued, requiring authorisation under the provisions of the Serious Organised Crime and Police Act 2005?

Five years ago, when I set out on this project, I wanted to write a book that would prompt us to think about why it is so important that we should be able to protest; about how the law should respond and how it should balance the competing rights and interests at stake; about whether there are some types of protest or protester or topics that the law should treat differently and if so, more harshly or more sympathetically; and about the growing interdependence of public and private regulation of the right. Now it is complete, I hope it will plot a route by which we might seek to resolve those issues.

This book sets out the law as of 1st August 2009 though Hart have been good enough to allow me to incorporate at the proof stage a little detail on some recent developments surrounding the policing of protest. These can be found at the tail end of chapter seven. They mostly concern the Strasbourg decision in the stop and search case, *Gillan v UK* decided by the European Court in January 2010. A few more unfortunately missed the cut. First, since the book was completed, after long years in the political wilderness, the common law offence of sedition (p 233) was finally abolished in early January 2010. This was the result of section 73 and section 182 of the Coroners and Justice Act 2009. Second, the Government appears to have started a process of review and reflection, perhaps a re-siting and reconfiguring. The Home Office’s latest policing White Paper *Protecting the Public: Supporting the Police to Succeed* (published in early December 2009) featured an immediate commitment from the Home Secretary to ‘set out clear principles for the policing of protest’ and an aim to implement a Code of Practice on Protest by June 2010. We shall just have to wait to see how much this echoes the agenda for change set out in the conclusion to this book.

The indulgence afforded me in allowing late entries some six weeks before publication would be reason enough to thank all those at Hart who have contributed to the eventual publication of this book. In particular, Jo, Rachel and Mel have all been wonderfully

supportive from my first tentative proposal in 2005 to its reaching the shelves some five years later as, in its later stages, were the copy editors and indexers. Especially though, I would like to thank Richard Hart himself. He has shown enormous tolerance, tact and understanding, far more perhaps than a first-time academic author could expect, and I hope that this book goes some way towards repaying that faith.

It is 25 years since I started as an undergraduate. Since that time, I have met, worked with and been taught by some very knowledgeable lawyers, far too many to name and thank here. I hope that being exposed to how they think, how they write and how they approach matters has rubbed off in some way and influenced my own thoughts, writing and approach. This book is the better for all that . . . though of course its conclusions and its interpretations, its views on where the law has gone wrong and all infelicities in language are attributable only to me.

I should like to single out four. In my first week studying law, just after the Miners' Strike and the decision in the *GCHQ* case, I met Conor Gearty. His description of public law as being about the power the state wields—'it's all the trendy lefty cases, David'—inspired me then and has continued to do so. In my first post, fresh from commercial legal practice with only an LLM behind me, Ian MacLeod was—and has remained—wonderfully supportive. That this book features far fewer six-line sentences with sub-sub clauses is down to the help (and dogged resilience) shown by Mark Stallworthy in my early days at UEA. In more recent times, Brigid Hadfield has shown me similar patience and has offered very wise counsel on several occasions. More generally, I have been fortunate to have spent the past 10 years among friends in the intellectually supportive and welcoming atmosphere of the Law School at UEA. Amongst those no one deserves more special mention than Claudina Richards, a true chum when things get tough.

For all the help of those colleagues in law, this book is really a product of my involvement with my family and friends. Without them to provide welcome relief from academic turmoil this book would never have been started—let alone finished—and so it is to them that I dedicate it. My dad has been silently supportive and publicly proud of the first Mead to go to university. I hope this book goes some way towards redressing my self-acknowledged failures at DIY and car mechanics. My sister has been a shining example of fortitude and optimism for many years. I would gladly have swapped this book for a measure of improvement in her health any day. My late mother did not even know this book had been started, let alone that it has come to fruition but a mix of her steadfast belief and her high expectations kept me going whenever a mental block took hold. In the past few years, university work—especially paperwork rather than writing-work—has eaten into 'spare' time far more than I would have liked. Inevitably, my children have lost out by having grumpy dad around for far too long. I'm very sorry for that. Ned and Posy—I think he's gone.

The fact that I was still able to spend weekends at football training or watching dance shows meant that evenings became tied up. One person more than anyone suffered from this selfishness. More than just making me sit down and finish—when I felt I just couldn't let go—and proof reading, Jude has proved to be a rock in the storm of life—not just when writing this book but throughout the past two decades. She lightens my mood, chivvies me along, tempers my excesses, holds us all together . . . and even laughs at my jokes. Thanks for everything; this book is for you.

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