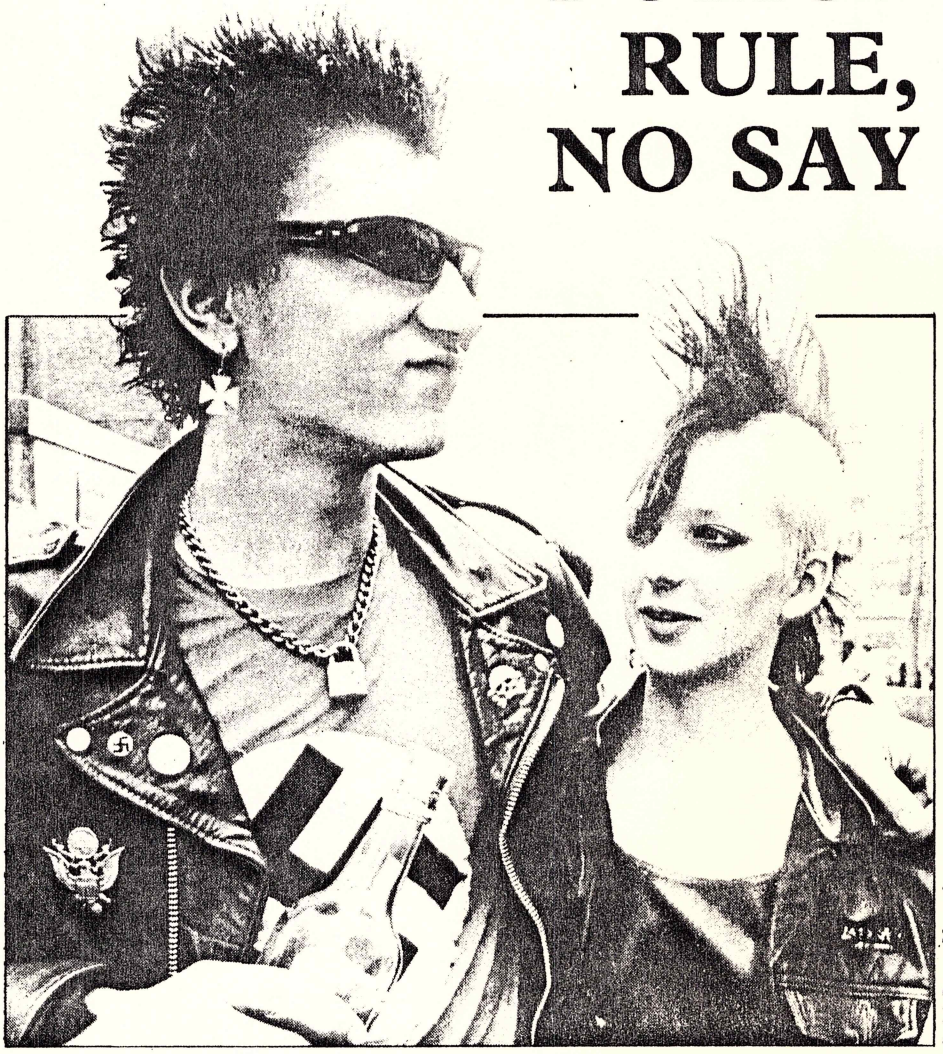
POLICE RULE, NO SAY



Judah Passow/Network

The police will have powers to rid Kings Road, Chelsea, of its main tourist attraction

CONOR GEARTY on the draconian new Public Order Bill — and how to challenge it

PLASTICS BULLETS may soon be on the streets of London, disguised as 'baton rounds' and maiming in the name of law and order. Water cannons will make it too, if the Metropolitan Police Commissioner satisfies himself that they are able to chase people up narrow London streets. The police are soon to get 3,000 new recruits — presumably to help in all this peacekeeping.

Meanwhile, both police pay and the number of serious crimes have continued their inexorable rise. Now the new Public Order Bill is to give the police sweeping new powers so that they will be able to deal with in the courts what the rest of their weaponry will combat less ceremoniously on the streets.

It is an odd way to keep the peace. The police themselves are distraught — and who can blame them? The riots of recent years have been bad and bloody and the police have been in the front-line. Panicked by the increasing lawlessness but professionally blind to the possibility of deeper causes, their reflex response is to demand more of all that's going. Like addicted gamblers, they crave the next bet — in men, equipment, powers — that will make all the difference. Governments should know better and look deeper. But this one doesn't and can't. So the police expand and the problem grows with them, and in the middle our liberties are horribly squeezed.

This new Public Order Bill is a case in point. Its ride so far has been easy. It slipped through the Commons under cover of Westland, the bombing of Libya, Chernobyl and the prison riots. Labour, the new-look party of law and order, has trodden carefully, sensitive to the fragility of its renovated image. Last Friday it went through the Lords, with only Lord Scarman demurring at its momentum. The usual pressure groups have been unusually quiet though the Legal Action Group sent out a plea for amendments. The Bill, beneficiary of this apathy, has drifted through in the swell of noticed events. Yet its provisions reflect what Lord Scarman has described as a 'fundamental lack of balance.' They deserve closer attention.

THE BILL DOES three important things. Firstly, it gathers together and redefines the old common law offences of riot, unlawful assembly (now to be called violent disorder) and affray.

- Where 12 or more persons present together use or threaten *unlawful violence* for a common purpose, then each person using violence for this purpose is to be guilty of riot where the conduct of the group would cause a person of reasonable firmness present at the scene to fear for his or her personal safety. (Maximum sentence: life imprisonment)
- *Violent disorder* will catch a member of a group of three or more using or threatening violence in similar circumstances but without any common purpose. (Maximum sentence: five years)
- *Affray* will be committed where a person uses or threatens unlawful violence towards another in such a way as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety. (Maximum sentence: three years).

But crucially, the Bill goes on to say that each crime may be committed in private as well as in public places and that in none of them need this person of reasonable firmness actually be, or even be likely to be, present at the scene. The offences are thus dramatically broadened.

All loopholes are to be closed. The result will be a set of crimes committed regularly and in the oddest of places: a family squabble at home may be violent disorder even without the use of violence; a person using violence to eject another from a private meeting may be guilty of riot if 11 others threaten to do the same; any offence against the person may be reclassified as an affray; and so on.

Now conduct like this, especially violence in the home, should perhaps be dealt with by the law. However this brings the Bill way beyond *public* disorder. So, if the powers are not used in these new ways, it will only be because the police will have chosen not to exercise them. The law will no longer govern the circumstances within which the police act. This is a daunting prospect for responsible police and public alike.

The Bill creates a new and controversial offence. Among other things, it will turn disorderly behaviour 'within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby' into a *criminal* offence. The critical thing to note here is that this proposed crime involves no breach of the peace or threat of violence. It could be useful as a curb on racial harassment, if the police interpreted it in this way, but it has the potential to go much further than that. Disorderly behaviour clearly refers to conduct which does not threaten the peace but which is otherwise antisocial or offensive to others.

Through this debasement of language the police will be handed a novel and draconian power. Are rowdy and boisterous undergraduates shouting their way from pub to College disorderly? What about a group of Rastafarians or punks in exactly similar circumstances? Most people, and certainly the police, are more likely to condemn as

disorderly the unknown and the unfamiliar than conduct which they themselves occasionally indulge in.

This clause gives to the police the power to punish non-violent non-conformity for the crime of being itself. The reader may query whether things will work out like this. The answer depends on the good sense of individual police officers. Our liberties will depend on that, not the law itself.

The third important thing the Bill does is to change the law relating to all public protest. The old power to ban marches where public disorder is feared is retained. In addition the police will be able to impose conditions upon processions and public assemblies with 20 or more people where they reasonably believe that either may result in serious public disorder, serious damage to property, serious disruption to the life of the community or that the purpose of the organisers is to intimidate others.

These conditions may be imposed either in advance or there and then by a mere police constable who stumbles upon the preparations for a protest. They may relate to the route of the procession and may prohibit it from entering specified public places. If it is a meeting, then the place at which is is to be held, how long it is to last and how many may attend may all be regulated by the police. Disobeying these instructions is to be a criminal offence for which it will be possible to be sent to jail.

The law will thus allow police to limit public protest to the point of extinction. A CND march around an empty common is less effective, if causing less inconvenience, than one down the High Street; a meeting about South Africa is less meaningful at Waterloo Bridge than in Trafalgar Square, especially if the number is cut to 20 after 2000 turned up. Yet the vaguest and most nebulous of criteria bring these draconian powers into play.

THESE THEN ARE the massively extended powers with which, along with water cannon and plastic bullets, it is intended to re-equip the police. Are there any constraints upon their exercise? Chief amongst these, in theory at least, is review by the courts.

In Parliament, the Home Secretary argued that because of this judicial involvement, the powers he proposed were not too extreme. But what is the reality? With vaguely defined offences and no jury trial (as with violent disorder and affray) the court will become a slot machine, not a referee.

But most disturbing of all, the courts simply have *not* acted as guardians of the citizen. They have in the past dramatically extended police powers without any democratic accountability. In 1985, the courts upheld the legality of police roadblocks where their purpose was to prevent striking miners reaching various collieries. The key assumption, largely unquestioned, was that the police had reasonably apprehended a breach of the peace. The same formula was used in 1961 to impose an arbitrary limit on the number of pickets permitted outside a workplace where the majority were on strike.

These examples can be multiplied. They reflect a willingness on the part of the courts to surrender law-making to the police. The police act; the courts justify. The tool of control is this ill-defined, non-statutory and infinitely flexible phrase, the 'reasonably apprehended breach of the peace'. It is the police abracadabra to total power.

And Parliament did not create it, does not debate it and has no control over how it has been or is likely to be developed.

What conclusions can be drawn from all of this? The lazy, unreflective support for the police shown by the courts in the past, if combined with the broad and woolly provisions of the new Bill, will confirm the special position of the police in our society. Even more than at present, their judgement will be law. Protestors, on the other hand, will have no rights, no entitlements, with which to oppose this power. Nor will those deemed culpably antisocial. All our freedoms will be contingent upon the beneficial exercise of what is effectively an absolute discretion.

This is an impossible imposition on the police. Their job is to keep the peace, not to balance rights. Reflecting this inevitable bias, the balance here is not between order and freedom, it is between order and convenience. The individual is not even on the scales. The ostensible safeguards of legislative and judicial control are thin and fragile, more useles than used.

If this is the situation, what can we do about it? The answer is a great deal. First, there should be enacted *a statutory right to demonstrate*. Even hedged about with restrictions, this will help the individual clamber back into view. It will force the courts and remind the police to take account of the other side. There will not just be tenuous fear of future disorder; there will also be the *right to hold a meeting*, the *right to march* and so on. Freedom may not always win, but at least it will be noticed.

Secondly, the legislature must reduce police discretion by enacting clear, narrowly defined, laws dealing with situations where public disorder has broken out. Thirdly, there should be issued further codes of practice (on the model of the Police Act codes) regulating the exercise of police discretion. A House of Commons Select Committee should be established to deal with policing powers. Chief Constables should publicly answer for their exercise in the way that other powerful officials with discretionary powers now regularly do. It would be interesting to hear them explain the established co-ordinating role of ACPO, the Association of Chief Police Officers, for example.

None of this, of course, will follow from the current Public Order Bill. The irony is that the Bill will do little to curb public disorder. Its new powers relate more to non-conformity, to inconvenient protests and to private fighting than to public violence. It is to be hoped that the extreme nature of many of its provisions will provoke some thinking along these lines. The alternative is a continuation of this distressing drift into discretionary law. A police state, even a benevolent one, is not a free society for long. □

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