

Protest, Parliament and the rule of law

Policy
Exchange 

Richard Walton



Protest, Parliament and the rule of law

Richard Walton



Policy Exchange is the UK's leading think tank. We are an independent, non-partisan educational charity whose mission is to develop and promote new policy ideas that will deliver better public services, a stronger society and a more dynamic economy.

Policy Exchange is committed to an evidence-based approach to policy development and retains copyright and full editorial control over all its written research. We work in partnership with academics and other experts and commission major studies involving thorough empirical research of alternative policy outcomes. We believe that the policy experience of other countries offers important lessons for government in the UK. We also believe that government has much to learn from business and the voluntary sector.

Registered charity no: 1096300.

Trustees

Diana Berry, Alexander Downer, Pamela Dow, Andrew Feldman, Candida Gertler, Patricia Hodgson, Greta Jones, Edward Lee, Charlotte Metcalf, Roger Orf, Andrew Roberts, George Robinson, Robert Rosenkranz, Peter Wall, Nigel Wright.

About the Author

Richard Walton served as a police officer in the Metropolitan Police in London for thirty years (1986-2016). A former Commander at New Scotland Yard, he was Head of the Metropolitan Police Counter Terrorism Command (SO15) between 2011-2016. He is now a Senior Fellow at Policy Exchange and a Distinguished Fellow at the Royal United Services Institute (RUSI). He holds a BSc Hons degree in Policing and Police Studies from Portsmouth University and a MSc in International Relations from the London School of Economics and Political Science (LSE).

© Policy Exchange 2019

Published by
Policy Exchange, 8 – 10 Great George Street, Westminster, London SW1P 3AE

www.policyexchange.org.uk

ISBN: 978-1-910812-91-4

Introduction

With the rhetoric inside the House of Commons ratcheted up to fever pitch this week, it is hardly surprising that protest outside Parliament became equally as chaotic and disruptive. Unruly groups of flag-waving ideologues from all sides of the Brexit debate ran around Parliament Square looking for public figures to berate and civil servants and members of the public ran the gauntlet to their offices. In a repeat of the infamous Anna Soubry moment earlier in the year¹, verbal insults were again levelled at various Members of Parliament. Bemused tourists and civil servants trying to focus on government business were treated to the relentless noise pollution of drumbeats, sound systems, 'sit-downs', road blockings and huge flags on sticks being stuck into street furniture and statues around Whitehall with protesters routinely blocking the entrance to Downing Street itself.

It was a circus, a safety issue and – given the resulting TV coverage – a national embarrassment and one might justifiably ask: where were the police in all this and what has happened to the rule of law? On the face of it, the rule of law seemed to be fraying at the edges this week, with the police standing by as protests became peripatetic, chaotic and disorderly and the reputation of our nation as a civilised place was slowly eroded. And this is not simply a Brexit issue. Westminster has been subjected to too many disruptive protests in recent times. For months, Black Cab drivers have been protesting by blocking Parliament Square and Whitehall on successive Fridays², parking their vehicles across lanes and tooting their horns for hours on end. In April, Extinction Rebellion brought the entire area to a standstill for over a week while serving food from unlicensed mobile food stalls³.

The right to protest

Does the right to protest trump all other rights? How tolerant should the police and public be if political protest routinely obstructs the life of the capital, hassling its citizens day by day? Why are protestors not immediately arrested for blocking roads and stopping traffic? Is there not a better way of demonstrating to the world that the UK can tackle highly contentious issues whilst facilitating peaceful protest that doesn't routinely and flagrantly break domestic laws?

Unfortunately, powers for dealing with static protests (as opposed to protest marches) are unfit for purpose and limited. ECHR Articles 9, 10 and 11⁴ protect the right to freedom of expression and to freedom of peaceful assembly respectively, albeit not defining where protest should actually physically take place. These ECHR rights have been taken, rightly or wrongly, to impose quite onerous limits on the police's ability to prevent or moderate protest. Public order legislation does exist to limit static protest and processions to specific locations and duration, but only if a police Commander can anticipate and evidence serious disruption,

1. <https://www.cps.gov.uk/london-south/news/pro-brexit-protestors-sentenced-after-abusing-anna-soubry-mp>

2. <https://www.taxi-point.co.uk/single-post/2019/04/03/Parliament-Square-taxi-protests-set-to-continue-on-tour>

3. <https://www.bbc.co.uk/news/uk-england-48051776>

4. https://www.echr.coe.int/Documents/Convention_ENG.pdf

disorder, damage to property or intimidation of others but gathering this evidence preemptively or even reactively is difficult and frequently challenged in the courts.

Static protests

Static protests⁵ can only be banned if the police have a serious concern that public disorder will occur and believe that it is likely to be held on private land without the permission of the owner of the land⁶. Hence, no static protest held in a public place can be banned regardless of how disruptive it is anticipated to be, even if static protests are not actually ‘static’.

The majority of ‘public order’ offences that can be enforced during static protests are contained in Part I of the Public Order Act 1986 which includes participating in a riot and using or displaying threatening or abusive words. Under section 4A of the Public Order Act 1986 it is an offence to cause harassment, alarm or distress by using threatening, abusive or insulting words in a public place; the offence used to prosecute two individuals for verbally abusing Anna Soubry MP calling her a “traitor” and a “fascist”⁷.

There are however a number of other powers available to police which need more robust enforcement if protest is to remain lawful. These include highway obstruction (under Section 137 of the Highways Act 1980⁸), harassment offences (Section 1A, Protection from Harassment Act 1997), public order offences (Public Order Act 1986), aggravated trespass (Section 68(1) Criminal Justice and Public Order Act 1994), criminal damage (Criminal Damage Act 1971) and breaches of bylaws.

Parliament and political protest

Contrary to popular belief, there is no special legislation in place which prevents protest in and around Parliament and Whitehall, aside from a rather obscure act (Police Reform and Social Responsibility Act 2011) that restricts camping and the using of loud hailers⁹. The Coalition government repealed more stringent legislation¹⁰ which had previously meant that demonstrations within a designated area of one kilometre from Parliament required prior police authority. The Crown Prosecution Service has issued specific guidance on public order offences during protest that includes harassment and communication offences¹¹.

The law and highway obstruction

There is an established legal precedent that a small obstruction of a highway¹² cannot be considered illegal which allows for protestors to lawfully obstruct part of a highway as part of their demonstration but only if traffic can continue to move along the road. Stated cases have established

5. A ‘public assembly’ is a gathering of “two or more people that is wholly or partly open to the air” (Section 16, Public Order Act 19986 [as amended by Sec. 57, Anti-Social Behaviour Act 2003])
6. Section 14A, Public Order Act 1986 [make law by Sec 70, Criminal Justice and Public Order Act 199
7. <https://www.cps.gov.uk/london-south/news/pro-brexit-protestors-sentenced-after-abusing-anna-soubry-mp>
8. An offence is committed under Section 137 Highways Act if a person “wilfully obstructs the free passage along a highway without lawful authority or excuse”.
9. <https://researchbriefings.parliament.uk/Research-Briefing/Summary/SN03658>
10. Sections 132 to 138, Serious Organised Crime and Police Act 2005 (SOCPA)
11. <https://www.cps.gov.uk/legal-guidance/public-order-offences-incorporating-charging-standard>
12. Section 137 of the Highways Act 1980 creates an offence of “wilfully obstructing the free passage along a highway” without “lawful authority or excuse”.

however that the right to peaceful protest cannot be considered a “lawful authority” to obstruct a highway. The enforcement of section 137 of the Highways Act 1980 is therefore seen as a justifiable encroachment on Article 10 and 11 rights. Yet, police officers often appear impotent when faced with protestors blocking roads and stopping traffic from moving as was seen in Whitehall this week. The one recent notable exception to this was the Special Escort Group police officer who physically pushed aside climate change protestors blocking the path of the convoy of Boris Johnson on his first day in office as it passed along The Mall to Buckingham Palace¹³. Physical force is required to make an arrest of a single person who is wilfully obstructing the highway and ordinarily at least two officers are required to effect the arrest. Large numbers of police officers are therefore needed to clear a road being wilfully blocked by many protestors engaged in a passive sit-down protest.

The Met’s initial strategy for dealing with the Extinction Rebellion protests in the Spring failed because it took little account of the ‘civil resistance model’ being deployed by the protestors who were prepared to be arrested in large numbers for blocking roads and bridges over days and days¹⁴. Faced with chaos and the whole of Parliament Square being turned into a pop festival for days on end and an intervention by the Home Secretary¹⁵, the Met responded with over a thousand arrests and restored order. On this occasion, the Metropolitan Police did issue conditions under section 14 of the Public Order Act 1986 requiring the protestors to restrict their activity to one location in London - Marble Arch but these restrictions were ultimately ignored by the protestors. The police stated that the orders were necessary to “prevent ongoing serious disruptions to communities”.¹⁶

Balancing the right to protest with the rights of citizens

Judging by the chaos surrounding Parliament this week, the time has now come for the Met to address the serious disruption to the seat of government that is being caused by the various tactics used by protesters, some using a non-violent but illegal and seriously disruptive ‘civil resistance model’. There is a need to balance the rights of ordinary citizens, parliamentarians, civil servants and the millions of tourists that visit the capital each year from around the world with the rights of protesters. It is time to re-set the limits of protest by confining it to allocated areas with strong and immediate enforcement of anyone attempting to block highways, roads and bridges.

New primary legislation is needed to redress the balance between lawful protest and disruption, especially in the vicinity of Parliament and Whitehall which should be re-designated as a specially restricted area, not least because – as we have seen on more than one occasion – it is vulnerable to attack by terrorists. This legislation should re-institute the requirement for police to be notified in advance of all protests in and

13. <https://www.itv.com/news/2019-07-24/boris-johnson-demonstrators-try-to-block-motorcade-as-heads-buckingham-palace/>

14. <https://www.lbc.co.uk/news/extinction-rebellion-surprise-cressida-dick/>

15. <https://www.telegraph.co.uk/news/2019/04/18/extinction-rebellion-co-founder-urges-workers-join-protests/>

16. Metropolitan Police, Update: Extinction Rebellion - arrests & condition extension, 18 April 2019. <http://news.met.police.uk/news/condition-imposed-on-extinction-rebellion-processions-in-london-376322>

around the designated area with police given the power to designate where protest can occur without major disruption.

Conclusion

It is important for democracy and the execution of the rule of law that protest is lawful and does not intimidate and harass those in and around the seat of government, regardless of the debates happening within Parliament. The police should not tolerate seriously disruptive forms of protest of any kind and commit to providing sufficient police resources to protecting the rule of law as it relates to protest. Parliament Square and Whitehall are major thoroughfares as well as being at the centre of our capital city. The enforcement of the criminal offence of highway obstruction in particular needs to be thoroughly re-examined in the light of new tactics by protest groups intent on breaking the law through organised 'sit-downs'.

The chaos we have seen outside Parliament and Downing Street this week cannot be allowed to continue unbounded and needs to be addressed by a twin track approach: new legislation to re-balance lawful protest with civic rights and a mindset change within the leadership of the Metropolitan Police towards more robust law enforcement.



£10.00
ISBN: 978-1-910812-91-4

Policy Exchange
8 – 10 Great George Street
Westminster
London SW1P 3AE

www.policyexchange.org.uk