Please Be Kind and Polite. Or Else…

Arrestments at the King's Coronation and the Right to Peaceful Protest

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Britain loves to project an image of polite calmness; of a stiff upper lip; of tea, crumpets, and lashings of ginger beer. The Paddington the Bear Twitter account epitomised this sentiment on the morning of the Coronation, reminding people to 'be kind and polite today.' Yet in England's green and pleasant land, as loyal British subjects scoffed their scones, quaffed their Pimm's and raised a glass to their new Monarch, it was not soft-power but good ol' fashioned state violence that ensured the historical Coronation went off without a hitch.

Britons love to pat themselves on the back for the show they can put on, for nobody does pomp and pageantry quite like Britain. The London Metropolitan Police, acutely aware that the world was watching, and eager to ensure that only the best of Britain was projected across the globe, promptly proceeded to arrest the head of anti-monarchist group Republic Graham along with 63 other people. The images beamed around the world that day thus included handcuffed peaceful protestors and the police seizing a van loaded with dangerous equipment: protest signs.

The protestors were arrested for spurious reasons such as 'to prevent a breach of the peace' and 'conspiracy to create a public nuisance'. The Police Crime Sentencing and Courts Act 2022, amongst other provisions, placed the common law offence of creating a public nuisance on a statutory footing and included within that definition acts which are intended to cause 'serious distress, serious annoyance, serious inconvenience or serious loss of amenity.' By attaching the inchoate offence of 'conspiracy' to the already vague crime of public nuisance, the police lowered the bar for arrest even further. The fact that protestors had been in frequent communication with the police in advance of their protest, going above and beyond what was required of them by the law did not help; if anything, it was used against them, allowing the police to claim they had intelligence that disruption was possible, thus satisfying the requisite 'reasonable suspicion' requirement necessary for their arrest powers to be exercised.

The Police Crime Sentencing and Courts Act 2022 was followed shortly afterwards this year by the Public Order Act 2023— the second substantial piece of legislation that impacts upon the right to protest that has been passed since the 2019 general election. This Act creates the offence of 'locking on'—to attach oneself to another person or object for the purposes of causing 'serious disruption.' According to Professor of UK Human Rights Law David Mead, this vaguely defined offence can be committed simply by linking arms. If this is not enough, it accompanies this new offence with the additional offence of 'being equipped for locking on'. The Met claimed that several of the protesters were found to have 'lock on' devices, despite the protesters insisting that they were merely ties to affix signs to their posts. Hopefully, the meaning of an 'object' that can be used to 'lock on' will not be interpreted so as to capture those of us who prefer to lock up our bicycles… or those of us with arms.

Under Article 11 of the European Convention on Human Rights, everybody has the right to peaceful assembly. This right includes the right to protest. The opposite of a peaceful protest is not a disruptive protest; it is a violent protest and the concept of violence is replete in the case law of the Court. Regardless of one's views of anti-monarchist protestors, their arrest in advance of the Coronation should concern anybody that values the right to protest in a democratic society. This attack on this fundamental democratic right has been enabled by the language of

'preventing disruption' used by both the police and politicians defending their actions.

'Serious disruption' is defined in the aforementioned Public Order Act 2023 as including cases in which individuals or organisations prevented, or hindered to more than a minor degree, from carrying out their 'day-to-day activities'. To say that this threshold is low, vague, and circular is an understatement. 'Serious disruption' also includes instances in which individuals or organisations suffer delay to the making or receiving of 'a time-sensitive product'— a product whose value or use to its consumers may be significantly reduced by a delay in the supply of the product to them. Ironically, the time-sensitive nature of lawful protest designed to align with the King's coronation was completely absent from the police's minds as they exercised their discretion. In fact, rather than cause pause for thought as it should have, it was actually deployed to justify their self-proclaimed 'low tolerance' for that day.

For this reason, the Met's half-hearted contrition after their handling of the Coronation rings hollow. The fact that most protesters were subsequently released without charge also does not absolve the Met or somehow mitigate their actions. The right to peaceful protest was fundamentally interfered with and undermined by the arrests. The damage had been done. There will likely not be another coronation for at least a decade—Long Live the King.

The breadth of discretion afforded to the police under these new laws are deeply worrying and the experience of republican protesters on the day of the Coronation does not bode well for how police will exercise this discretion. This worry is further compounded by the recent use of counter-terrorist powers in the UK to detain a French publisher who had recently been involved in the French anti-austerity protests. Nor were the police actions on the day of the Coronation an outlier. From the arrests of participants at the vigil for Sarah Everard—a woman murdered by a serving Met police officer— to the 'kettling' of schoolchildren at a protest against tuition fees in 2010, the Met, unfortunately, have a blemished record when it comes to respecting the right to protest.

Nor does responsibility lie solely in the hands of the Med. Government ministers, including the Prime Minister, have defended the Met's actions. Indeed, new police powers to deal with protests are just the latest in the line of an increasingly authoritarian trend evident in British constitutional law and politics. From attempts to repeal the Human Rights Act 1998, to the now mainstream immigration policy of deporting all refugees and asylum seekers to Rwanda, to say that the UK is on a dangerous path is not hyperbole.

And while anti-monarchy protestors have caught the Met's attention in light of recent historical events, it is clear that the main targets of these laws will not be those aggrieved at the notion of a hereditary head of state but environmental protesters who, in recent years, have stepped up their campaign to further government action on the not trivial issue of catastrophic climate change.

In the name of preventing 'disruption' caused by protesters, there is little thought given to preventing the disruption caused by climate change. It matters not to the law that a person's 'day-to-day' activities are hindered by an anomalous weather event directly attributable to climate change. So long as disruption is caused by what economists call an externality rather than the stated intention of protesters, the UK says keep calm and carry on. State security interests are now to ensure that the economy is not interrupted. In any case, it is not like a pandemic which some scholars have attributed to climate change can seriously disrupt global supply chains, or anything.

As I wrote previously for *Verfassungsblog*, climate change will inevitably result in more emergency powers being deployed—whether to bypass the ordinary law-making processes to implement measures necessary to tackle climate change, to respond to the natural disasters caused by climate change, or to respond to political movements challenging the state's response or lack thereof. The UK's curtailing of the right to protest will, I fear, not be an isolated case. It will, instead, become a model which, much like many of its counter-terrorist innovations in recent decades, will be transplanted throughout the world. And all this

can be done without the need to formally declare a state of emergency.

For the time being, everybody in England would do well to remember Paddington the Bear's request that we all be kind and polite… or else.

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