

W201 The Individual and the State

Study notes on civil liberties: a comparison of English law and Article 11

This course requires

- an understanding of civil liberties in England and Wales and
- an ability to compare English law with convention rights

Freedom of peaceful assembly

English law

Freedom of assembly exists only in so far as no individual law is broken.

In Dicey's time although he said that 'a man had no more right to hold a meeting than to hear a band or eat a bun' the right to hold a meeting was generally unrestricted apart from the criminal law of riot unlawful assembly affray and breach of the peace. The 20th century has seen ever increasing restrictions on this right. As well as common law restrictions the Public Order Act 1986 and the Criminal Justice and Public Order Act 1994 have tilted the balance substantially.

Restrictions on the right to assemble

- 1) Bye laws and local statutes (eg controlling Trafalgar Square) may apply
- 2) Breach of the peace and obstruction of the police

Part of the duty of the police in England and Wales is to prevent breaches of the peace and they are allowed to arrest persons where they apprehend a breach of the peace might occur. In Dicey's time it seemed that the position of persons holding a lawful meeting might be looked on favourably - **Beatty v Gillbanks** 1882 Div Ct (the threatened unlawful acts of an opposing meeting could not justify the arrest of a Salvationist otherwise behaving lawfully). However this case represented a high water mark for the protection of the right of peaceful assembly at common law. In 1885 the offence of obstructing a police constable in the execution of his duty was created. Subsequent cases have generally supported the police in whatever steps they considered necessary to prevent a breach of the peace. An example is **Duncan v Jones** 1936 Div Ct when a police officer's reasonable apprehension that an otherwise lawful meeting would provoke a breach of the peace persuaded the court to hold that the police order to disband must be obeyed. Failure to do so amounted to obstruction of a police officer acting in the execution of his duty.

More recently senior courts have upheld and also clarified police common law powers to prevent a breach of the peace.

First ‘breach of the peace’ has been widely defined in **R v Howell** 1982 CA “...there is a breach of the peace whenever harm is actually done or is likely to be done to a person or in his presence his property or a person is in fear of being so harmed through an assault, an affray, a riot, unlawful assembly or other disturbance.”

Secondly modern cases have allowed the police some latitude in deciding whether to focus on the original protesters or those who seek to disrupt lawful protest.

In **DPP v Percy** 1995 Div Ct the court held that otherwise lawful conduct could amount to a breach of the peace if words spoken were likely to provoke a third party to violence.

Whilst accepting this in **Redmond-Bate v DPP** 1999 Div Ct the court went on to suggest a constable should focus on where the threat was coming from and direct preventative action there (quoting *Beatty v Gillbanks* with approval).

In **R (Laporte) v Chief Constable of Gloucester** 2005 Lords – it was made clear that there must be a reasonable apprehension of an **imminent** breach of the peace before any preventative action was permissible. If this threshold is crossed police action must still be proportionate and (obiter) should focus on those about to act disruptively and not on peaceful protesters wherever possible.

A modern case dealing with what is today described as ‘kettling’ is **Austin v Metropolitan Police Commissioner** 2009 Lords – Austin was caught up in a police cordon as part of crowd control measures. The police detention (short of arrest) of demonstrators and passers by for up to 7 hours was upheld – on the facts it did not constitute a deprivation of liberty caught by Article 5. The test to apply was whether the restrictions imposed were in good faith, proportionate and applied for no longer than was reasonably necessary.

3) Obstructing the highway

This has been an offence since 1835. The present Highways Act 1980 includes the offence at Section 137. Whether a meeting on a highway is an obstruction depends on its reasonableness. This involves a balance between the right to protest and the need for public order.

4) Meetings and processions

Police powers to regulate these are contained in the Public Order Act of 1986 as amended by the Criminal Justice and Public Order Act of 1994.

Section 11 requires notice of a procession to be given to the police. A senior police

officer may then impose conditions under Section 12 on processions (and under Section 14 on assemblies) if he reasonably believes serious public disorder damage to property or disruption to the life of the community might follow.

By Section 13 a procession may be banned altogether by a chief police officer if conditions could be insufficient. The local authority must consent.

There was no power to ban a meeting or assembly (as opposed to a procession) under the 1986 Act but this has now been added by the 1994 Act in a new Section 14A. A trespassory assembly may be banned on application to a local authority if a chief police officer believes it is likely to involve trespass and might result in serious disruption to community life or damage to land or buildings. Such a decision may be challenged by judicial review.

In **DPP v Jones** 1999 Lords an order was made banning a trespassory assembly within 4 miles of Stonehenge. A group travelling along a public highway entered the 4 mile radius. Held - provided the assembly was reasonable and non-obstructive there was no trespass on the highway and therefore no trespassory assembly. Lord Irvine felt that this decision was compatible with the freedom of peaceful assembly in Article 11 of the Convention (not then in force).

5) Trespassers

The 1994 Act in Section 61 allows police to remove persons trespassing on land if there are six or more vehicles and there is damage to land or property on it.

This wide power is intended to deal with new age travellers but could affect gypsies also.

6) Rave parties

Section 64 of the 1994 Act allows police to order people to leave gatherings of 100 or more persons playing amplified music. If people do not leave the police can seize vehicles and equipment.

7) Public order offences

These include:

- riot (12 or more persons)
- violent disorder (3 or more persons)
- affray (2 or more persons)
- incitement to racial hatred
- threatening behaviour likely to cause fear or provocation of violence
- threatening behaviour likely to cause harassment alarm or distress

Of these offences the Section 5 offence based on harassment alarm or distress is the widest and has been criticised as a limit on freedom of expression. It has been used to prosecute persons wearing obscene T shirts and a person carrying a satirical poster of Mrs Thatcher.

Section 18 of the Public Order Act makes it an offence to use threatening abusive or insulting words or behaviour with intent to stir up racial hatred or where racial hatred is likely to be stirred up. There does not have to be immediate disorder following the use of the words or behaviour. A prosecution requires the consent of the Attorney General.

Convention law

Article 11.1

Everyone has the right to freedom of peaceful assembly and to freedom of association with others...

Article 11.2

subject to conditions including:

- national security or public safety
- prevention of disorder or crime
- protection of health or morals
- protection of the rights and freedoms of others

How will this right impact on English law? Note that the right is only to **peaceful** assembly so that laws which limit the right to non peaceful assembly will not be affected.

Will the convention help an accused in a Beatty v Gillbanks situation? (The peaceful Salvationist arrested due to the opposing meeting.) Does it mean that the police in future will take more active steps to deal with counter demonstrations to protect the initial meeting's right to peaceful assembly and freedom of expression?