

ANALYSIS:

Good conduct: How can protests be ethically policed?

Policing protest and disorder

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Ten years ago, London was the scene of the G20 Summit protests. This week climate change activists caused major disruption in the city. Protests are part and parcel of a liberal democracy, but how do we ensure they are ethically policed? Professor Peter Joyce and Dr Wendy Laverick examine the lessons of history and the implications for policing future protests.

Ten years ago, the policing of the G20 Summit protests received prominent media and political attention. The police response to the events that had taken place was delivered by the then Chief Inspector of Constabulary, Denis O'Connor, who produced two reports, *Adapting to Protest* and *Adapting to Protest – Nurturing the British Model of Policing*. These reports acknowledged the crucial role performed by protest in liberal democratic political structures and put forward recommendations regarding how future events of this nature should be policed.

Since 2009, additional initiatives have been introduced into policing which have relevance to the policing of protest, in particular relating to ethical police decision-making. This article thus seeks to develop the debates that were initiated in 2009 by considering the manner in which ethical considerations apply to the policing of protest. In doing so, reference is made to a number of past protests in order to highlight ethical issues that are of considerable contemporary importance.

What is protest ?

In his first report, published in July 2009, Denis O'Connor stated that 'Protest is a broad term, referring to various activities undertaken by those who wish to express their opposition to, or support for, amongst other things, an idea, policy, campaign or event'. It might be argued that the purpose of protest is to draw attention to an issue or episode to which those engaged in the action regard as wrong – especially in a moral sense – which they seek to challenge and, ideally, change. Protest is usually associated with targeting governments (whether national or supra-national) and items of public policy (in which case the term 'expressing dissent' is sometimes preferred), although protest can also be directed against the operations of practices of the private sector (for example, in the form of consumer boycotts).

Protest is conducted through a diverse range of activities. These include petitions, demonstrations, direct action (of which there are two main forms – non-violent direct action – referred to as civil disobedience – and direct action that entails some form of confrontational physical action which frequently erupts into violence) and industrial disputes. Although the latter are normally concerned with bread and butter issues such as pay and conditions of work, they also frequently assume a political dimension, especially when used to challenge the policies and/or the authority of a government as was the case with miners' disputes conducted

in the 1972, 1973/4 and in 1984/5.

Additionally, although riots are frequently depicted as mindless acts of hooliganism devoid of any meaningful motive, these have also been depicted as purposeful political statements – an expression of what is sometimes referred to as ‘unruly’ politics conducted by those who have no confidence in the operations of the conventional political system to address their needs and concerns. Although no attempt is made in this article to suggest that the police should aid the facilitating of rioting, it is important that the response that is delivered accords to ethical standards of practice and behaviour.

Protest and liberal democracy

It has been stated above that protest is a cardinal underpinning of the operations of the UK’s liberal democratic political structure. As Denis O’Connor pointed out in the first of his reports into the 2009 G20 protests, ‘We should remember that public protests have been part of British political life for a very long time. Protests are an important safety valve for strongly held views. In addition, the right to protest in public is a synthesis of iconic freedoms: free assembly and free speech’.

The safety valve function to which Mr. O’Connor referred is of considerable importance. As rulers in North Africa found out around ten years ago in events referred to as ‘Arab Spring’, stifling protest is likely to cause serious problems in the long term resulting in violent regime changes.

The police and protest

The role of the police service to maintain the Queen’s Peace underpins interventions in those forms of protest that threaten to undermine public order or which actually result in episodes of disorder. Denis O’Connor argued in his first report into the 2009 events that the role of the police was to facilitate what he termed ‘peaceful assembly’ or ‘lawful protest’ and he further argued in his second report that this intervention should be in a manner that reflected the core values of British policing, which he defined as ‘an approachable, impartial, accountable style of policing based on minimal force and anchored in public consent’.

The National Decision Model

Subsequent to Mr O'Connor's 2009 reports, the National Decision Model (NDM) was introduced into police circles and now governs all police actions, including the policing of protest. This was introduced into policing in England and Wales in 2012 and provides a framework in which all police decisions are made and in which decisions can subsequently be examined and challenged. It replaced the former Conflict Management Model (CMM), although these two models are not widely different: however, the name CMM implied it was primarily of relevance in situations in which conflict was anticipated or had occurred as opposed to each and every police decision.

The NDM has five stages, each of which constitute elements in the police decision-making process –

- Gather Information / intelligence
- Assess threat and risk and develop a working strategy
- Consider powers and policy
- Identify actions and contingencies
- Take action and review what happened

Additionally, a sixth element sits at the heart of the NDM. This is the Code of Ethics which was drawn up by the College of Policing in 2014 (initially, when the model was first devised, it was referred to as the Statement of Mission and Values). The Code of Ethics establishes a set (9 in total) of policing principles that seek to ensure that officers work honestly and ethically and puts forward a set of standards of professional behaviour (10 in total) that seek to govern the behaviour of police officers.

The principles and standards of behaviour that are contained within the Code of Ethics seek to ensure that police decisions are based upon ethical reasoning and thus produce outcomes that are ethically justifiable. Ethical behaviour requires actions to be both legally correct (in terms of complying with the law and with the principles that underpin it) but also to be morally defensible. In the case of a clash, morally defensibility may out-trump compliance with the law. This concept is not totally new in police circles: in his evidence to Lord Scarman's Inquiry into the 1981 disorders, James Anderton, then chief constable of Greater Manchester, drew attention to the 'sense and sensibility' principle of policing. By this he meant that although the police should always enforce the law, there were usually several options as to how this could be done in order to avoid confrontational situations. The same reasoning is behind considerations

that seek to provide for ethical police decision-making and, as will be argued below, is of considerable importance to the policing of protest.

The potential clash between the law and the need for actions to be morally defensible is not unique to policing and occurs in all walks of life. It was evidenced, for example, in the MP's expense scandal in 2009. The public were outraged to learn of the items for which MPs had legitimately claimed expenses. These included the upkeep of a swimming pool, the maintenance of a helipad, the tuning of a piano and the purchase of horse manure for use as a garden fertilizer. The actions of most MPs were legally correct but morally contentious.

Ethical issues and dilemmas affecting the policing of protest

One difficulty with the NDM is that it can be a quite cumbersome instrument of guidance, requiring every decision to comply with the five stages set out in the model together with the 9 policing principles and then the 10 standards of professional behaviour that are set out in the Code of Ethics. There arises the danger that compliance may amount to not much more than a box-ticking exercise.

Accordingly, this article seems to abstract from the NDM a small number of ethical principles which have historically been key concerns relating to the way in which protest has been policed and which provide guidance for the future policing of such events.

Proportionality

An important ethical concern regarding the police response to protest is that of proportionality. As with terrorism where the prime concern of a liberal democracy is to strike the right balance between security and liberty, so policing protest requires the correct balance to be struck between over-reaction and under-reaction.

Over-reaction embraces a response that may be viewed as a deterrent to protest, one that, for example, makes potential or actual protesters fear for their personal safety and thus discourages their involvement.

Concerns of this nature may arise, for example, in the physical response the police prepare to deliver to protest. It affects weaponry – defensive equipment such as riot shields can be used

offensively – and tactics, such as kettling / hyper kettling where accusations have been made (often in connection with protests associated with the anti-globalization and anti-capitalist movements) – of the absence of a release plan to allow vulnerable or distressed persons or those inadvertently caught up in the police containment to exit. Concerns were also voiced during the 1984/5 miners' dispute regarding the replacement of the time-honoured 'push and shove' tactic in favour of more aggressive police methods (including the use of snatch squads) that had been standardised initially in the *ACPO Public Order Manual* (1983).

One the danger that arises in situations where the police have a wide degree of weaponry at their disposal and are well-trained in tactics to address public disorder (or the threat of it) is that force becomes the first as opposed to the last resort – in the (slightly altered) words of John Alderson (then chief constable of Devon and Cornwall) in his evidence to Lord Scarman's Inquiry in 1981, the police will rely on the use of 'CS gas and plastic bullets' as opposed to an approach that seeks to 'win over hearts and minds'.

Over-reaction may also be displayed in the manner in which police powers are used in connection with protest. It is important that powers are used in an ethical manner and that the basic freedoms associated with liberal democracies are not undermined abuses of by police powers. Accusations of over-reaction have been made in connection with the use of excessive powers or their use for purposes for which they were not intended. Examples have included the random stopping and searching protesters, requiring protesters to divulge their names and addresses or in connection with the random photographing of protesters (an action associated in recent protests with Forward Intelligence Teams).

Examples when issues of this nature arose include the 1984/5 miners' dispute in connection with restrictions imposed by the police on the freedom of movement associated with 'Operation Intercept'. This was mounted around Nottinghamshire and was designed to prevent the mass picketing by striking miners of pits in Nottinghamshire that remained working. It was also a significant issue affecting protesters at the Kingsnorth Climate Camp in 2008. Complaints have also been made in more recent protests that direct action is treated as terrorism (sometimes termed 'domestic terrorism') and has been policed accordingly – for example in connection with allegations that anti-terrorist powers were used against opponents of fracking at Barton Moss, Greater Manchester, in 2013-14.

Proportionality also needs to be displayed in connection with gathering intelligence to ensure that methods such as bugging or intercepting communications are used in an ethical way that does not conflict with the freedom of political expression.

Accusations were voiced during the 1984/5 miners' dispute of the unethical use of various forms of interception, including the planting of an MI5 informant in the offices of the National Union of Miners and the use made of GCHQ against those who were viewed by the government as 'the enemy within'. Covert police actions in connection with environmental protesters (which will be further discussed below) also raise issues of proportionality – what were these protesters planning to do that could justify the scale and nature of the police response ?

Finally, ethical standards of professional behaviour need to be evidenced by officers who police protest events. Ethical problems with the physical response to protest have arisen regarding what has been seen as unprofessional actions. These include removing identification numbers, an accusation that was made concerning the policing of the Manningham riots in Bradford in 1995 and also in connection with the policing of the G20 Summit protests in 2009. Accusations have also been made in connection with the gratuitous use of force: Lord Scarman's Inquiry into the 1974 Red Lion Square demonstration commented unfavourably on this issue in connection with police arrests and similar criticisms were also made in connection with police actions at Orgreave in June 1984 and at the G20 protests in April 2009 .

The gathering of intelligence by the use of covert methods is a further area where ethical standards have not always been adhered to by the police. Revelations (documented by the journalists Rob Evans and Paul Lewis in 2014 regarding the work of undercover officers in what was initially named the Special Demonstration Squad) regarding covert operations directed against environmental protest groups raised many ethical issues. These included what actions were acceptable for police officers acting as informants to undertake in order to gain credibility with the group(s) under surveillance. A particular concern was the willingness of some of these officers to form physical relationships with female protesters in order to confirm their credibility within the protest group. The unethical nature of this action led one of the women who was duped in this way to recently claim she had been the victim of a police 'conspiracy to rape'.

A key ethical concern regarding actions that may be viewed as disproportionate by some members of the general public is that these may effectively result in re-drawing the boundaries

of the liberal democratic tradition by (in the words of the organisation State Research in 1979). 'declaring to be illegitimate political and industrial activities which had previously been thought to have distinguished a liberal democracy from an authoritarian or fascist society'.

Under-reaction, however, also has undesirable outcomes related to ethical police conduct. It may result in a loss of confidence and trust by the public in the police for failing to act decisively in the face of a severe breakdown in public order: complaints of this nature have been frequently made with regard to the police response to riots that included the disorders in 1981 and 2011 where complaints were received from the public that the police failed to treat requests for assistance with the speed and vigour that was required. One consequence of this is vigilante action which, as was evidenced in 2011, can have tragic consequences.

A further ethical dilemma affecting under-reaction in relation to protest has arisen in connection with gathering intelligence. The key concern is timing – when should the police, acting on this intelligence, interrupt a protest. A decision may be taken not to intervene in a situation for numerous reasons that include the desire to amass more intelligence on the targets, the perceived need to wait for the targets to commit more serious acts in order to secure a stiffer punishment from the courts or the wish to ensure an informant's cover is not 'blown' which could result in him or her facing personal danger. However, inaction of this nature may be to the detriment of safeguarding the public against the excesses of the behaviour of protesters.

One example of this was the protest (in the form of direct action associated with the Animal Rights Militia) that aimed to close a farm that was breeding guinea pigs for medical research at Newchurch, Staffordshire. This was conducted over a lengthy period (1999-2005) during which time the villagers suffered from a number of acts that ranged from intimidation to violence. The police were clearly aware of what was happening but did not act decisively to stop the campaign of violence until direct action took the form of the sacrilegious act of digging up a body of a relative of the guinea pig farm-owner from the local graveyard. During this prolonged period of police under-reaction, the villagers were effectively left to fend for themselves.

Bias and ethical conduct

Ethical behaviour requires protest and protesters to be treated without fear or favour. However, it has been argued that this has not always been the case and that some aspects of protest are

treated differently to others.

During the 1960s and 1970s, there was a tendency for police actions to be criticised on the grounds that it was pro-right and anti-left – accusations that were especially voiced in connection with the policing of events by the National Front (and latterly by the BNP) at demonstrations that included Red Lion Square (1974), Lewisham (1977) and Southall (1979). The ethical argument that was put forward was that but for the police presence, the far-right would not have been able to voice their opinions in areas where such views caused offence and intimidated those who lived there. Although the police argued that their role was that of upholding the right of free speech and assembly, their decisions did not give equal weight to the concerns of those who lived in areas where demonstrations took place and who found the presence of far-right demonstrators unwelcome, offensive and frightening.

However, the stance adopted by the police towards the far-right has altered in the post-Macpherson period and firm action has been taken against organisations such as the English Defence League when it has intended to stage provocative political events in racially sensitive areas. There is also now a greater appreciation within intelligence communities of the dangers posed to social harmony by the far-right.

Bias was also alleged to be illustrated in events other than demonstrations. Distinctions were drawn as to how the police service responded to the 1984/5 miners' dispute and the 2000 fuel crisis, both of which posed a challenge to the authority of the government and aimed to undermine its capacity to govern. The former (a working class protest) was seen to be treated robustly by the police while the latter (a middle class protest orchestrated by a loose alliance of farmers and road hauliers) was characterised by police inaction which resulted in fuel supplies drying up and the nation grinding to a standstill.

There is a current tendency in academic circles to distinguish between contained and transgressive groups. The former are those groups that cooperate fully with the police at the planning stages of protest while the latter are those who refuse to communicate with the police (despite legal requirements contained in the 1986 Public Order Act that they should do so) and / or have a poor track record relating to the use of violence at demonstrations and similar events.

Transgressive groups include anti-globalization and anti-capitalist protesters whom, it is alleged, are often on the receiving end of aggressive police tactics, especially kettling. While police actions towards these groups can be defended on the grounds that they are the consequence of the protesters' own actions or omissions, it does, nonetheless, suggest that some protests and protesters are treated by the police more favourably than others. This suggests that in order to secure equality of treatment, the ethical policing of protest requires the police to adopt a 'need to reach' approach to embrace groups that have historically displayed unwillingness to cooperate with the police service.

A further issue affecting police bias arises from external control over policing. External control can be of two types – formal (for example, through legislation) or informal. The charge of outside control of policing – in the form of the accusation of politicisation – was especially made during the miners' dispute 1984/5 where the police were accused of acting at the behest of the government, becoming 'Maggie's Boot Boys'. In more recent events affecting fracking protests, the police have been accused of acting as a resource of corporate interests – a charge similar to that which was made concerning the protests against live animal exports at Brightlingsea in 1995.

Openness, transparency and ethical behaviour

When policing protest, there is a need to adopt what Denis O'Connor referred to in his first report as a 'no surprises' approach: he stated, 'Protesters and public should be made aware of likely police action in order to make informed decisions'. This advice had not always been followed and contradictory police advice or actions was attributed to severe disorder at events that included Red Lion Square in 1974 and Southall in 1979. At the former of these events, the police altered the agreed route of a procession while it was underway and in the latter event, a protest against the National Front that had been agreed to by local police officers was ignored on the day of the event by those responsible for policing the event. This problem was then compounded by the Special Patrol Group initiating what amounted to 'an operation within an operation' which created confusion in the minds of protesters as to the nature of police intentions towards them.

In order to meet ethical requirements of this nature, there is now a greater tendency for events to be discussed as they unfold and decisions explained. Protest Liaison Officers (or related

developments built on the Swedish concept of dialogue policing) and the willingness of the police service to use the social media during protest events are examples of enhanced openness and transparency and are capable of being developed further.

Reviewing police decisions

Ethical practice can be developed from reviewing police actions at specific protests in order to learn lessons from what was done well and what areas need to be worked upon. However, formal reviews of this nature are typically conducted within police circles. There is thus the need to recognise that the police are only one stakeholder in decisions that relate to protest. Members of the public also have a role – one that might, for example, be discharged by police ethics committees in those forces that have them. Such external involvement can help safeguard a situation in which the police regard their handling of a protest event as a superlative operation but which might be viewed by outsiders as a public relations disaster. This emphasises the importance of evaluations of the image of the police being conducted when the handling of protest events is under review.

During the early 1970s, Sir Robert Mark, then Commissioner of the Metropolitan Police, made the observation that the police objective when dealing with protest was to ‘win by appearing to lose’. By this he meant that the image that the public gained of the police when dealing with confrontation was the prime concern. There is thus the need, when reviewing police actions, to consider the image of the police service and how it is affected by their behaviour at a specific event – bearing in mind the ability of modern technology including mobile phones to film police actions and then to subsequently air them on social media – a development that Denis O’Connor once described as a ‘game changer’ for the police.

Enduring images from the 2009 G20 summit protests included that of a pregnant woman having a riot shield thrust in her face and of an officer breaking police lines to throw a member of the public – who was not involved with the protests – to the ground and who later died. The image that the general public have of the police is a key building block of consent from which legitimacy is derived.

There thus arises the danger that unethical conduct – even when associated with a tiny percentage of officers policing a protest – may have severe repercussions for the public attitude towards policing and the police service in general. It follows, therefore, that all reviews of police

operations in relation to protests must ensure that the image of the police and public perceptions of police behaviour are high on the list of issues that are placed under consideration.

One further aspect of the review of police actions during a protest relates to internal democracy in the police service and in this context the need to take account of how officers – perhaps of junior rank – viewed the manner in which an event was policed. In the 1984/5 miners' dispute, for example, beat bobbies working in pit villages in places such as Nottinghamshire often had a rather different perspective as to the desirability of adopting a robust response to striking miners (especially when delivered by 'outside' police forces such as the Metropolitan Police Service) than did their senior officers.

Conclusion: outside involvement in strategic decisions to achieve ethical outcomes?

This article has sought to outline key areas which underpin an ethical approach to police decision-making in the policing of protest. In conclusion, it is appropriate to consider whether there is a case for a greater formalized level of involvement of non-police personnel in strategic decisions related to protest.

In Northern Ireland, the Parades Commission (whose status is that of a non-departmental public body) has (since 2005) exercised functions in relation to parades that it deems to be contentious or offensive and has the ability to impose restrictions on such events. These include re-routing, the duration of the event and banning certain participants based on their behaviour at previous events. However, the actual policing of these events (that is, operational decision-making) is the responsibility of stewards or the PSNI.

In Scotland, the 2006 Police, Public Order and Criminal Justice (Scotland) Act made local authorities the arbiters regarding processions, as is the case in other European countries, including Spain.

Arrangements of this nature provide for shared ethical decision-making regarding the policing of protest which is compatible with the emphasis now placed on partnership policing.

Additionally, however, shared decision-making also presents the potential for requiring protesters to act in an ethical manner which (especially since the anti-Viet Nam war protests in Grosvenor Square in 1968) has not consistently been the case, in particular when black bloc

tactics are adopted by protesters.

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Photo credit: *Francesca E Harris*, [*Extinction Rebellion*](#)

This article can be found here:

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