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THE POLICE AND THE PUBLIC ORDER ACT

Many things can be, and have been, said about the Public Order Act 1986, and the way in which the police have made use of it over the last five years. In this article, I simply want to make three statements, and set out the reasons for making them. Doing this may go some way towards putting the Act, and the police's use of it, into a relevant perspective, providing helpful background to those trying to answer the questions in the Consultation relating to whether the word *insulting* should be retained in Section 5 of the Act.

The three statements I want to make are these:

(a) The Act was never intended to relate to situations which are merely about someone taking offence because someone else has expressed an opinion;
(b) The Public Order Act 1986 has been misused by the police;
(c) Police action in respect of a number of 'free speech' cases indicates both the reduced value which contemporary society now places on free speech, and the marginalisation of the place of the orthodox Christian faith, within society.

Let us look at each of these statements in turn in more detail.

(a) the Act was never intended to relate to situations which are merely about someone taking offence because someone else has expressed an opinion;

On 13 March 1985, a football match took place at Luton Town's Kenilworth Road ground, at which Millwall were the visitors. During the game, Millwall fans ripped 700 plastic seats from their mountings and used them as weapons and shields as they charged onto the pitch on three separate occasions, fighting with police and home fans. After the match, the violence spread to streets surrounding the ground, and several people were injured. It was described by one writer as 'the worst example of football violence seen at an English ground.'

This was just one of a number of violent incidents at football grounds during that season. Groups of young football hooligans had set themselves up as 'firms,' each identifying themselves with a

particular football club, with the object of carrying out violent attacks on the 'firms' identified with rival clubs. At Birmingham City's ground on 11 May, a 14-year-old boy died when a wall collapsed during trouble between Birmingham City and Leeds United fans. Then on 29 May there occurred the Heysel Stadium disaster in Brussels, when 39 people attending the European Cup Final were killed in a wall collapse during disturbances involving Liverpool and Juventus fans prior to the game.

Among the sanctions resulting from all this mayhem, away fans were banned from Luton Town's ground, and English clubs from all European football competitions, for four years.

The British public was incensed by these repeated incidents of violence, destruction, death and injury at what they felt ought to be safe, innocent and pleasurable sporting events. The Prime Minister, Margaret Thatcher, promised 'serious measures' to bring the law to bear against stadium violence. The promised measures were those eventually enacted in the Public Order Act 1986.

Although legislation must always be viewed on the basis of its wording, rather than on the background to its enactment, the events leading up to the Public Order Act 1986 do make it crystal-clear what kind of criminal activity motivated the legislators in 1986. The pitched battles around football grounds are a far cry from a peaceful conversation between a street preacher and a police officer about what the Bible teaches about homosexuality.

(b) The Public Order Act 1986 has been misused by the police

Here are the details of two incidents which have taken place within the last two years:

- In April 2010, a Christian street preacher, Dale Macalpine, was preaching in Workington, Cumbria, when he became involved in conversations, first with a passer-by and then with a homosexual police community support officer. During these conversations he explained that the Bible made it clear that homosexuality was contrary to Bible teaching. He had not mentioned homosexuality in his public preaching that day (though that would have been perfectly legal as well). Mr Macalpine was arrested and charged with a public order offence.

- In September 2011, Blackpool police called at the Salt and Light Café in Layton Road, Blackpool, following a complaint by a member of the public about material displayed on a TV screen. The café owner is Mr Jamie Murray, and, as its name suggests, the café is an openly Christian environment. Mr Murray was interviewed, asked to switch off his TV display, and warned that he risked being arrested.

What these two incidents have in common is that they are both wholly about the issue of freedom of expression, without any complicating or aggravating feature, such as threats, aggression or intimidation. In both cases the context was one in which the communication was entirely cerebral

– appealing to the mind. In spite of this, the police intervened in both cases, wholly inappropriately, on the basis of the Public Order Act 1986.

Between the Workington incident taking place, and the charging of Mr Macalpine under the 1986 Act, the police had several opportunities to come to the obvious conclusion that no offence had been committed, but signally failed to do so. They were guilty either of a woeful ignorance of the law, or an indifference to whether it was applied correctly or not. Whichever of these is true, they were also grossly inconsiderate to Mr Macalpine and the obligation to treat him with fairness and respect. The duty of the police is to defend and uphold Mr Macalpine's legitimate freedom to exercise his rights, not to oppose and undermine him. The police, quite rightly, have had to pay compensation to Mr Macalpine for wrongful arrest.

Mr Macalpine's rights are not hidden away in acres of statute and regulation from which only many hours of tortuous study can extricate them. They are spelled out simply and straightforwardly in the 'free speech' clause in the Criminal Justice and Immigration Act 2008 which says this: 'For the avoidance of doubt, the discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices, shall not be taken of itself to be threatening or intended to stir up hatred.' On the strength of this statement, there would have had to be some aggravating factor for there to have been any possibility that an offence might have been committed.

One would have thought that so clear a statement on the face of an Act of Parliament would have provided the police with an unquestionable basis for allowing Christian preachers and others to exercise their legitimate rights, free of any risk of being challenged, arrested and even charged by the police.

The Workington incident is one of the case studies helpfully included in the Consultation Document published in relation to the present Consultation. The way in which the Document describes the Workington case is particularly helpful and significant.

'In April 2010, a Christian street preacher was arrested and charged with a public order offence when he told a passer-by and a gay police community support officer that, as a Christian, he believed homosexuality was one of a number of sins that go against the word of God. The Crown Prosecution Service dropped the case before it went to court on the grounds that there was insufficient evidence to provide a realistic prospect of conviction.'

In other words, this very official retrospective view of the case acknowledges that there were no circumstances which justified any application of the provisions of the Public Order Act 1986.

Jamie Murray, owner of the Salt and Light café in Blackpool, was in September 2011 displaying Bible texts on a TV screen. This was purely visual, the sound being turned down.

For a ‘public order’ offence to have been committed under the 1986 Act, there has to be either ‘intent’ on the one hand, or, on the other hand, ‘awareness’ that the action may cause harassment, alarm or distress. The offence has, therefore, to be a conscious act – not a bi-product of some thoughtless action. Whether it is ‘intent’ or ‘awareness,’ we are talking about something ‘deliberate’ in relation to the bringing about of the three detrimental effects.

Transfer that rationale into the Blackpool café. What is Mr Murray ‘intending’ by showing his Bible verses on a TV screen? Certainly he isn’t intending the viewer to experience ‘harassment, alarm or distress.’ For his purposes that would be an entirely counter-productive outcome. He wants customers to be interested, drawn, or challenged, by the words on the screen – to think and consider, rather than to be afraid or intimidated.

As to ‘awareness,’ it would not have occurred to Mr Murray that his TV screen might cause ‘harassment, alarm or distress.’ To him, the whole project is low-level background evangelism – an engagement with the mind, rather than anything combative. Evangelical Christians will recognise this picture. The absence of ‘awareness,’ far from being something culpable, is in this case the very factor which demonstrates innocence, and puts the whole scenario well beyond the province of ‘public order’ legislation.

A dose of common sense would have revealed this to the police, but it wasn’t there on the day, and Jamie Murray endured hours of anxiety prior to the police’s dropping of the case.

Even without common sense, reference to the current guidance issued by the Association of Chief Police Officers (ACPO) would have given the Blackpool police the same answer. As the current Consultation Document *(paragraph 1.6)* points out, revised guidance on the Public Order Act 1986, entitled *Keeping the Peace,* was issued by ACPO in December 2010 ‘to help (police officers) deal more effectively with Section 5 cases and give due consideration to freedom of expression issues.’

The Document helpfully goes on to say *(paragraph 1.10)*: ‘ACPO guidance clarifies that the key is to distinguish between the message or opinion being communicated and the manner in which it is conveyed.’ Quite so. However, this ACPO guidance was in place when police visited the *Salt and Light* café in September 2011, and it is not at all clear why the Blackpool police appear not to have made that distinction.

Of course it is right and necessary for the police to follow up complaints, so as to know the substance of the matters complained of, and to establish whether any criminal offence has been committed. But in the above two cases, it should have been obvious within a couple of minutes that this was a free speech issue, pure and simple – the peaceful expression of viewpoints – without any public order implications.

Far from this being the immediate outcome, however, in all too many cases of this kind and similar, incidents have been investigated for many hours, sometimes involving the arrest of the

suspect, as in the case of Mr Macalpine, before the police finally wake up to the irrelevance of the 1986 Act, and the case is dropped.

By and large, law exists to require or prohibit particular actions. In a democracy, the lengthy process required to enact legislation is intended to ensure that, once in place, the law reflects the will of the people. The motive of law is generally to protect or give rights to individuals and/or to enhance the well-being of society as a whole.

Given this well-established understanding of the place of the law in society, the proper role of the police is to be subject to the law. They do not make law, nor have a personal opinion or agenda, nor campaign for social change. They are the servants and executors of the law as it stands. If the law is, in their view, faulty, the police cannot repair it as they go along. They cannot act as though the law says something which it doesn't. They are bound by the actual provisions of the law, 'faults' and all.

The police should never go into a situation with presuppositions, saying to themselves: 'This ought not to be allowed' or 'I can see why this person feels a bit aggrieved.' They are technical executives on behalf of the law, not entrepreneurial interpreters of justice and social rectitude. They must approach any inquiry impartially, gather all the relevant facts, and judge in the light of those whether an offence under any legislation has been committed.

The recent 'free speech' cases have left an impression that sometimes the police priority has not always been to apply the law objectively and dispassionately, but to find a way of prosecuting people whose conduct or viewpoint doesn't match their own criteria. If the police are driven by their own opinion, using the law merely as an instrument to help them achieve a desired outcome, people will rightly judge that the law is no longer being honoured or respected. The police would no longer be the servants of the law, but its master. Such a state of affairs would bring both the law, and the police, into serious disrepute, and the public, justly, would lose confidence in both.

This is not to say that the police are guilty of deliberate malicious prejudice, nor that the glaring police errors evident in a minority of cases are typical of all police forces throughout Great Britain. However it is a fact that, on too many occasions, the police have brought themselves into disrepute by thoughtlessness, lack of attention to their legal accountability, and failure to give sufficient regard to the context of the situations confronting them.

(c) Police action in respect of a number of 'free speech' cases indicates both the reduced value which contemporary society now places on free speech, and the marginalisation of the place of the orthodox Christian faith, within society.

Unless in the context there are unlawful aggravating features, or any other applicable restrictions prescribed by law, people are free to express any view without any fear that the law will intervene, either in response to their holding such views or to their expressing them.

It is important to emphasise the qualification ‘as long as the context has no unlawful aggravating features.’ Article 10 of the European Convention on Human Rights (ECHR) – the Article which protects the right of freedom of expression – makes it clear that this is not an unqualified right, and sets out a number of factors which might inhibit that right.

It should be noted that the same freedom of speech described in Article 10 of the EHCR has allowed the Christian faith, and God himself, to be attacked relentlessly by ridicule, verbal assault, irreverent profanity and blasphemies – in books, on stage, and on television and radio. Although this is distasteful and sickening, no-one, least of all the people of God, must sacrifice the universal right of freedom of expression on the altar of their own partisan ideologies. Our best response is to pray that those making these detestable assaults on Christianity will lose the desire to do it. If no-one wants to do it, it will not be done.

There is, however, something more important and worrying than the frequent scurrilous misuses of the right of freedom of expression. This bigger issue is the fact that in recent years, the fundamental principle and right of freedom of expression has been downgraded in the hierarchy of social values in British society.

In today’s society, the pre-eminent social value is equality. This attribute almost on its own defines present-day society. Every other value has its place only to the extent that it does not conflict with equality’s demands. Equality maintains its ‘top value’ status by virtue of the politically-correct system under which public life is nowadays regulated and administered.

At the same time as achieving ‘value-in-chief’ status in society, equality has accomplished something else. It has managed to make any challenge to it appear obnoxious and socially offensive. So it is that in the course of a campaign to defend free speech, The Christian Institute are described as ‘zombie-worshipping bigots.’ This is a good example of those attacking freedom of expression using that same freedom of expression to say far more scurrilous things than they complain of. The irony of this always seems to escape them.

At any given moment, one way of measuring how important freedom of expression is to British society is to consider the instincts and conduct of the police. A reasonable and objective spectator today would say that the police don’t go into a situation determined to uphold the right of freedom of expression. A far more likely issue in the minds of the police, given the current social climate and society’s presuppositions, would be: ‘Is someone being discriminated against?’ This is why free speech clauses are essential in legislation, and why it is vital that, in cases where Christians have been prevented from, or punished for, exercising free speech, the issue should be pursued in law with the utmost determination.

As regard for freedom of expression has declined, so has respect for the tenets and values of Christianity. Fifty years ago, the Christian religion and its teaching had the respect both of the British establishment and of the population generally. The religion’s freedom to pursue its activities and to believe and preach its orthodoxies were accepted without question simply

because they were the activities and orthodoxies of the Christian faith. Cases like the Blackpool café incident would never have arisen. Christian activity of all kinds would have been respected and acceptable. This is no longer the case. The acceptability of the beliefs of the Christian faith, and the right to preach them, are constantly being called into question.

As Lord Waddington said in the debate on the Criminal Justice and Immigration Act in the House of Lords in May 2008: 'There is, right now in this country, an intolerance of Christians of a sort that I never thought I would see. Street preachers are threatened and Christians expressing mainstream orthodox views on sexual behaviour are harassed and abused.'

Given the rapid change from a Christian to a secular society, the loss of status and respect which the Christian faith has suffered is likely to be reflected in the attitude of the police to particularly Christian activity. The impression at times is that the police view Christian activity not as a mainstream orthodox right to be defended and upheld, but as a threatening minority pursuit with a potential to cause disruption and division in society.

While the consultation on the Public Order Act is welcome, and may lead to better law, notably through the removal of the word 'insulting' from Section 5, the country also needs better policing – a more scrupulous police professionalism; better training; more effective implementation of the ACPO guidance; and better handling and management of cases.

If these needs are not readily understood and willingly addressed, it may mean that the heart of society is more deeply deceived than we realise.

Rod Badams

The Public Order Act 1986

Section 4A is not being reviewed in the Consultation, but the relevant paragraphs of it are included here to show that to intend to cause harassment, alarm or distress is, and will remain, an absolute offence.

Section 4A Intentional harassment, alarm or distress.

1) A person is guilty of an offence if, with intent to cause a person harassment, alarm or distress, he -
a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or
b) displays any writing, sign or other visible representation which is threatening, abusive or insulting, thereby causing that or another person harassment, alarm or distress.

2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the person who is harassed, alarmed or distressed is also inside that or another dwelling.

3) It is a defence for the accused to prove –
a) that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling, or
b) that his conduct was reasonable.

Section 5

1) A person is guilty of an offence if he –
a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or
b) displays any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.

2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

3) It is a defence for the accused to prove –
a) that he had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress, or
b) that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling, or
c) that his conduct was reasonable.

Section 5 needs to be viewed in the light of Section 6(4) of the Act, which states the following:

4) A person is guilty of an offence under section 5 only if he intends his words or behaviour, or the writing, sign or other visible representation, to be threatening, abusive or insulting, or is aware that it may be threatening, abusive or insulting or (as the case may be) he intends his behaviour to be or is aware that it may be disorderly.

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