

# "When we smash windows..." Black Blocs and breaches of the peace

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Arrestable offences; Breach of the peace; Damage to property; Demonstrations;

Violence

*Breach of the peace is a cornerstone of public order law in England and Wales and was considered recently by the Supreme Court in R. (on the application of Hicks) v Commissioner of Police for the Metropolis . However, the common starting-point for discussion of the doctrine is the case of Howell . It is argued here that this judgment has been misinterpreted to the extent that it requires a property owner to be present where a breach of peace is founded on harm or the threat of harm to property. The issue has been placed in stark relief by recent changes to the nature of protest. Black Bloc protestors eschew physical violence to persons but pursue a strategy of deliberate property damage. The police may intervene to prevent a breach of the peace that reasonably appears likely "in the near future", but will be unable to intervene if the property owner is not present, unless harm to persons is anticipated or a criminal offence is "about to" be committed. This article re-examines Howell in light of the Black Bloc phenomenon and contends that, in the absence of legislation, the courts should clarify the law so that the threat of property damage is sufficient to constitute a breach of the peace whether or not the owner is present.*

## Introduction

In the recent case of *R. (on the application of Hicks) v Commissioner of Police for the Metropolis* <sup>1</sup> the Supreme Court considered whether there had been a breach of protestors' rights to liberty and security<sup>2</sup> when, in order to prevent a breach of the peace, the police arrested and detained a number of protestors on the day of the Royal Wedding. The meaning of breach of the peace was not in issue, but the Supreme Court approved the judgment in *R. (on the application of Laporte) v Chief Constable of Gloucestershire Constabulary* <sup>3</sup> and, by necessary implication, Watkins LJ's description of breach of the peace in *Howell* <sup>4</sup> which had been relied upon as definitive:

"We are emboldened to say that 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 to his property or a person is in fear of being so harmed through an assault, affray, a riot, unlawful assembly or other disturbance." <sup>5</sup>

Notwithstanding the Supreme Court's approval of this statement of the law, it is argued here that there is one part that remains uncertain, namely, whether harm or the threat of harm to property is sufficient for a breach of the peace, and whether the property owner must be present. This article re-examines the judgment in *Howell* and the "respectable",<sup>6</sup> but largely undeveloped argument that damage to property is sufficient on its own to constitute a breach of the peace.<sup>7</sup>

It has frequently been argued that the law on breach of the peace should be abolished altogether and the appropriate powers provided for in statute instead.<sup>8</sup> That may be an attractive proposal, but there seems little or no prospect of it happening. Over many years, numerous reports, commissions and legislative bills that proposed reform have all come to nought<sup>9</sup> and it is apparent that Parliament has no appetite for reform. Although proposals for reform made it as far as publication in

the Serious Organised Crime and Police Bill, they were not enacted in the 2005 Act of the same title.<sup>10</sup> In the light of this, it seems that if reform is to occur it will be only through the common law.

The doctrine of breach of the peace forms a "cornerstone" of public order law in England and Wales<sup>11</sup> and is a central part of "preventive" public order policing.<sup>12</sup> It is this, rather than statutory provision, that the police rely upon.<sup>13</sup> Indeed, Fenwick contends that breach of the peace "effectively overshadows all the statutory changes of the last 30 years".<sup>14</sup> Therefore, this uncertainty in the law is a serious problem, especially in the light of recent increases in recorded public order offences<sup>15</sup> and criticism of police understanding of the law on breach of the peace.<sup>16</sup> However, it is contended here that it is of particular significance at present because of important changes to the nature of protest. Since around the turn of the millennium, after decades of the "normalisation" of the confrontation between police and protestors based on negotiation and dialogue, there has been an upsurge in violent "street politics".<sup>17</sup> This has involved "transgressive" protestors,<sup>18</sup> who have developed innovative "action repertoires"<sup>19</sup> that set them apart from protestors from established social movements. These protestors have a greater willingness, in particular, to engage in property damage as a deliberate act of protest.<sup>20</sup>

The most prominent representatives of this phenomenon are those protestors who, dressed completely in black and often wearing masks, are called "the Black Bloc". They have become a small, if highly visible presence at protests in the UK<sup>21</sup> and across the Western World, most recently at the G20 Summit in Hamburg.<sup>22</sup> The Black Bloc's protest strategy of property damage presents a particular problem for the police who rely on their breach of the peace powers. The police have the power to intervene to prevent a breach of the peace by arrest or intervention short of arrest<sup>23</sup> where it reasonably appears there is the likelihood of harm to persons or property "in the near future".<sup>24</sup> However, in relation to property damage, the further requirement that the owner is present is problematic. As we shall see, although it is difficult to generalise about the Black Bloc, most activists do not regard property damage as violence and insist that they are non-violent. Therefore, they may arrive at a protest with the express purpose of damaging corporate property in order to convey a political message, but to be otherwise non-violent.<sup>25</sup> However, as it is unlikely that the property owner will be present, the police will be unable to rely on their breach of the peace powers to take preventive action or arrest, unless either they anticipate harm to persons in the near future or, have reasonable grounds to suspect that criminal offences are "about to" be committed.<sup>26</sup>

It is argued here that this is an important flaw in the preventive doctrine of breach of the peace, but also a significant misinterpretation of the judgment in *Howell* <sup>27</sup> which, accordingly, is discussed in some detail. However, before so doing, it is necessary, first, to establish the nature of the Black Bloc phenomenon that has highlighted this problem in the law.

## **What is the Black Bloc?**

The origins of the term "Black Bloc" lie in Germany, as it is believed to have been coined by the West Berlin police to refer to black-clad squatters who took to the streets to resist evictions in December 1980.<sup>28</sup> These activists were part of the broadly Marxist Autonomous Social Movement,<sup>29</sup> but Black Bloc activists are now, in general, located within the anarchist movement.<sup>30</sup> Indeed, it is no coincidence that the post-millennium upsurge in street activism coincided with a period described as the "third phase" of expansion for anarchism.<sup>31</sup> The "Black Bloc" is frequently discussed in the singular, but it is important to note that it is not one group

or organisation with defined membership. Nor is it a global organisation, even if it can be observed at protests in a range of countries. Rather, it is:

"... a collection of anarchists and anarchist affinity groups<sup>32</sup> that get together for a particular protest action. The flavour of the black bloc changes from action to action, but the main goals are to provide solidarity in the face of a repressive police state and to convey an anarchist critique of whatever is being protested that day." <sup>33</sup>

That is, "there is no such thing as *the* Black Bloc; there are, rather, Black Blocs"<sup>34</sup> that arise at demonstrations but dissolve afterwards and take different forms in different circumstances.

Therefore, it has been argued that the Black Bloc should not be regarded as a "group" at all, but, rather, as a protest tactic or a way of behaving in street protests.<sup>35</sup> Accordingly, the Black Bloc may be described as "an approach to action" at protests that stresses "group unity, mobility and confrontation". <sup>36</sup> The form of that "confrontation" can vary, but primarily takes the form of violence to property and, in particular, the premises of banks and multi-national companies <sup>37</sup>

## **The Black Bloc strategy of property damage**

The Black Bloc are often dismissed as criminals<sup>38</sup> who aim, not to protest, but to engage in "mindless violence". <sup>39</sup> However, it is clear that, contrary to Theresa May's assertions when she was Home Secretary, the Black Blocs' actions are not simply the random behaviour of thugs attacking any property in the vicinity.<sup>40</sup> Rather, their actions are a form of contentious politics where violence is utilised as a matter of strategic choice and not accident.<sup>41</sup> This is consciously targeted *symbolic* violence,<sup>42</sup> although Juris argues that Black Bloc actions are better described as *performative* violence that is meant to:

"... characterise symbolic ritual enactments of violent interaction with a predominant emphasis on communication and cultural expression. This is in contrast to "direct political violence" meant to cause death or injury to other human beings." <sup>43</sup>

That is, the violent actions undertaken by Black Blocs are "thought out and rationalised"<sup>44</sup> and intended to convey a radical critique of the economic and political system through property damage rather than physical harm to persons. This may take the form of a critique of the environmental record or working practices of a particular multi-national business,<sup>45</sup> or a more general anti-capitalist message, which serves to "disentangle the dehumanising conflation of property and people" or "dismantle the hierarchy of commodification by which law and property stand above people and places". <sup>46</sup> The well-known ACME Collective "N30 Black Bloc Communique" puts it more succinctly:

"When we smash a window, we aim to destroy the thin veneer of legitimacy that surrounds private property rights." <sup>47</sup>

The Communique was also clear that the Black Bloc had no interest in fighting with the authorities.<sup>48</sup> Accordingly, a Black Bloc will typically arrive at a protest \*Crim. L.R. 835 intending to convey a particular message through engaging in "vandalism and property destruction without wishing to harm human beings". <sup>49</sup> The academic literature on the Black Bloc is very clear that despite reports of their violent character "... most Black Bloc participants do not regard themselves as violent by any means" and are unwilling to use physical force against others.<sup>50</sup> Indeed, the anthropologist, Graeber, describes it as "amusing" that Black Blocs are described as violent because this contradicts his experience with them "in the field", during which he found activists to be so

committed to non-violence that they "carefully avoided stepping on worms" and debated "whether it's really justifiable to kill a mosquito". 51

Black Blocs sometimes engage in purely peaceful marches but there have also been occasions when they have gone beyond property damage and been physically violent towards persons. There are some activists who are not averse to physically confronting the police in what they regard as "legitimate acts of resistance" against a violent state.<sup>52</sup> However, the weight of academic authority suggests that at least some of this physical violence is in self-defence, for example, to protect non-violent demonstrators from police violence,<sup>53</sup> or the result of right-wing agent provocateurs infiltrating Black Blocs and committing random acts of violence in order to justify repressive policing measures.<sup>54</sup> Accordingly, these exceptional cases should not detract from the fact that the principal protest strategy of a Black Bloc is to cause property damage as a form of political expression and that they seek to avoid physical violence against persons.

This hallmark strategy of "non-violent warfare"<sup>55</sup> against corporate property presents a problem for the police relying on breach of the peace rather than statutory powers to prevent public disorder. Breach of the peace remains the mainstay of public order policing<sup>56</sup> and the common law power for both the police and the public<sup>57</sup> to intervene to prevent a breach of the peace was preserved expressly by the Criminal Law Act 1967<sup>58</sup> and unaffected by later codification of the law in the Police and Criminal Evidence Act 1984. Accordingly, it is apparent that Parliament intended to maintain the ability of the police to take steps to prevent a breach of the peace without first establishing what criminal offences have been or are being committed or who is responsible.<sup>59</sup> However, where the police do not anticipate violence to persons, but only the threat of violence to property, the definition of breach of the peace in *Howell*<sup>60</sup> appears to require the property owner to be present for there to be a breach of the peace. If the owner is absent, there is no breach of the peace. Where the owner is absent the police must wait until the point at which there are reasonable grounds to suspect that an offence is *about to* be committed, for example, under the Criminal Damage Act 1971 or Public Order Act 1986,<sup>61</sup> before they can use their statutory powers of arrest, which must also be "necessary" and relate to a specific individual.<sup>62</sup>

Therefore, where the police have, for example, reliable intelligence that Black Bloc activists are planning to attend a protest, with the intention to cause criminal damage to property at some point (but not physical harm to persons), they will be unable to arrest, for a breach of the peace, activists marching purposefully towards their chosen targets, unless an owner will be present. If there is evidence of an agreement to commit criminal damage, there may be grounds for the police to arrest for conspiracy<sup>63</sup> to commit criminal damage or aggravated trespass.<sup>64</sup> However, they will not be trespassers if they do not leave the highway and, although peaceful protestors may not welcome them, it may not be clear whether they intend to disrupt, obstruct or intimidate lawful activity. It is possible that an officer may have reasonable grounds to suspect an agreement by implication, from a person's presence in a group known for its strategy of property damage, but these grounds may be difficult to establish because of the disparate character of Black Blocs. The latter have a deliberately "decentralised and unpredictable" nature and characterise themselves as "conductors setting the stage for improvisation" rather than "military tacticians".<sup>65</sup> Moreover, where such grounds exist, it seems more likely that they will justify arrests before the demonstration, as occurred when protestors planning direct action against a power station were arrested before they could carry out their actions.<sup>66</sup>

If the police neglect to deal with the threat of property damage that appears likely in the near future, there is also the risk of more widespread public disorder. There may sometimes be a fine line between the Black Bloc's performative violence and physical violence to persons, and there is the

danger and that the former will give rise to the latter as violence escalates,<sup>67</sup> in particular, where there is a "critical mass" of people.<sup>68</sup> For example, members of the Black Bloc have reported that crowds can be "won over" at protests to support other violent actions by criminal damage to unpopular targets, such as banks and multi-national shops/restaurants. <sup>69</sup>

There may also be human rights implications of police actions. Full discussion of these is beyond the scope of this article, but the Supreme Court and House of Lords<sup>70</sup> have considered the effect on rights to liberty and protest, under arts 5 and 10 – 11 <sup>71</sup> of the European Convention of Human Rights. As these rights are not "absolute",<sup>72</sup> the key issue will often be whether the restriction on human rights was proportionate, although the rights of Black Bloc activists are limited to the extent that they intend committing offences of criminal damage, as there is no protection for protestors with violent intentions.<sup>73</sup> However, a human rights issue that is pertinent here is that the rights of "non-Black Bloc" protestors may be interfered with if the police do not intervene to prevent property damage caused by Black Blocs. It is a common complaint by peaceful protestors that demonstrations are "hijacked" by Black Blocs and, therefore, the message that they intended to convey is undermined or lost as a result of the violence that ensues.<sup>74</sup> There is an important difference in "manner and form" between a peaceful and a violent protest<sup>75</sup> and it is evident that, although issues of proportionality will arise, the right to protest may be infringed where the police neglect their positive obligation to intervene against Black Blocs in order to facilitate a peaceful protest.<sup>76</sup>

The European Court of Human Rights has held that, in view of the difficulties in policing modern societies, the right to protest should not be interpreted so as to impose an impossible or disproportionate burden upon the police.<sup>77</sup> Nevertheless, protestors do not lose their right to protest where violent protestors join an otherwise peaceful demonstration<sup>78</sup> and the police continue to have a positive obligation to intervene to protect these rights. Her Majesty's Inspectorate of Constabulary has stated that reliable police intelligence will be key in that respect.<sup>79</sup> However, even where this provides good grounds on which to intervene early to protect these rights, the ability of the police to act will be inhibited by the way that breach of the peace has been interpreted. Accordingly, it is now necessary to examine the common law doctrine and the uncertainty that has resulted from the way that the judgment in *Howell* <sup>80</sup> has been interpreted.

## ***Howell* and the clarification of "breach of the peace"**

A lay person could be forgiven for expecting that breach of the peace, a doctrine that has been at the heart of public order law for many years would be: (a) a criminal offence; and (b) clearly defined. However, although breach of the peace is a criminal offence in Scotland,<sup>81</sup> it is not in England and Wales.<sup>82</sup> In terms of definition, the expression must also be treated with considerable caution. In the first place, one should take care not to confuse it with a police constable's historic and primary duty to preserve the Queen's peace by preventing the commission of criminal offences and protecting property, as this is a duty of more general nature.<sup>83</sup> In the second place, the doctrine should not be "taken at face value", as Glanville Williams aptly commented: "The expression 'breach of the peace' seems clearer than it is". <sup>84</sup>

Supperstone contends that common-sense lies at the roots of breach of the peace.<sup>85</sup> Accordingly, as "peace" is an ordinary English word, one might anticipate that, in common-sense terms, it would mean quietness or an "absence of noise."<sup>86</sup> It would then follow that a "breach of the peace" would be a breach of this condition. Indeed, it is apparent that at one time it was thought that any public disturbance constituted a breach of the peace and that the additional presence of violence was only

significant because it provided a power of arrest.<sup>87</sup> However, there is also authority that something more than a mere disturbance to the equilibrium of the normal state of society<sup>88</sup> is required for a breach of the peace. "Mere agitation,"<sup>89</sup> noise,<sup>90</sup> disturbance of a public meeting by annoying the speaker,<sup>91</sup> disorderliness (such as swearing)<sup>92</sup> or quarrelling<sup>93</sup> have all been held to be insufficient.

The law was clarified in *Howell* <sup>94</sup> to the extent that it is now "beyond doubt"<sup>95</sup> that the essence of a breach of the peace is violence or the threat of violence.<sup>96</sup> Accordingly, not every disturbance is a breach of the peace. It is also commonly considered that Watkins LJ went further than just clarifying the essence of breach \*Crim. L.R. 839 of the peace and that the description of the doctrine referred to earlier<sup>97</sup> amounts to a full definition.<sup>98</sup>

Watkins LJ observed that a "comprehensive definition of the term "breach of the peace" has very rarely been formulated"<sup>99</sup> but it is not clear that his Lordship intended to do more than provide examples of conduct that would constitute a breach of the peace. Watkins LJ was not alone in regarding breach of the peace as an elastic concept that was not amenable to exact definition. Shortly after the judgment in *Howell* , the Law Commission observed that the concept was susceptible to broad interpretation<sup>100</sup> and the Government made it clear in its White Paper, published prior to the Public Order Act 1986 , that it "saw advantage in the flexibility of the common law powers" and was, therefore, content not to define breach of the peace in legislation.<sup>101</sup>

The judgment in *Howell* has been accepted generally as authoritative, but it has also been subject to the criticism that it lacks certainty in two respects.<sup>102</sup> First, it has been claimed that there is a second definition that conflicts with the one cited earlier ("the first definition")<sup>103</sup> and, secondly, that *Howell* conflicts with Lord Denning's judgment, just over six months later, in *Chief Constable of Devon and Cornwall Constabulary Ex p. Central Electricity Generating Board ( CEGB )*. <sup>104</sup> However, both these criticisms appear misplaced.

As it does not appear to have been Watkins LJ's purpose to provide a definition of breach of the peace, the first criticism of *Howell* as containing contradictory definitions falls away. However, even if it is accepted that it was his Lordship's purpose and the following is a further definition,<sup>105</sup> it is arguable that, rather than conflicting, it is in very similar terms:

*"Nevertheless, even in these days when affrays, riotous behaviour and other disturbances happen all too frequently ...we cannot accept that there can be a breach of the peace unless there has been an act done or threatened to be done which either actually harms a person, or in his presence his property, or is likely to cause such harm, or which puts someone in fear of such harm being done."*<sup>106</sup>

The conflict is said to arise because the "first definition" may be regarded as limiting the types of violent conduct that will constitute a breach of the peace to the common law offences listed— assault, affray, etc., whereas the "second definition" does not contain these limitations.<sup>107</sup> However, the opening phrase in the "second definition" (here italicised for emphasis) is usually omitted. The conflict vanishes when it is included, as it becomes apparent that this is virtually the same list of offences listed at the end of the "first definition". Neither statement appears to have been intended as a limit on the type of violence but, rather, as examples of the violent conduct that would suffice for a breach of the peace.<sup>108</sup>

In relation to the *CEGB* case, it has been argued that Lord Denning's statement of the law was "radically different",<sup>109</sup> as his Lordship appeared to hold that the threat of violence was not a prerequisite for a breach of the peace and it was sufficient if a person was unlawfully and physically prevented from carrying out his work.<sup>110</sup> This analysis has been doubted<sup>111</sup> but, in any event, if

Watkins LJ's judgment is interpreted as providing only a partial definition or description of breach of the peace, any such differences from *Howell* appear much less significant.

If *Howell* is reliable authority for the proposition that breach of the peace is concerned with the prevention of violence or the threat of violence, it still remains to be considered whether the "violence" that Watkins LJ placed at the centre of the doctrine includes harm to property, and whether that is property *simpliciter* or whether the presence of an owner is required.

## **"Harm ... to a person or in his presence to his property"**

In his classic article on the subject, Glanville Williams doubted that a threat to property was sufficient violence for a breach of the peace.<sup>112</sup> However, he conceded that it might be possible where the threat was to a dwelling-house rather than personal property.<sup>113</sup> More recently, Feldman, concurring with that view, found that the effect of *Howell* was to limit property damage to a person's "message in his presence".<sup>114</sup> However, as Williams acknowledged in his later work,<sup>115</sup> this interpretation of *Howell* is unduly narrow because at no point in Watkins LJ's judgment is there an indication that his Lordship meant to restrict the term "property" to a "dwelling-house".<sup>116</sup> "Property" is, of course, a well-recognised civil law concept that applies beyond dwellings to anything that is capable of being the subject of ownership.<sup>117</sup> Indeed, the Public Order Act 1986, which to some extent codified the common law in this area,<sup>118</sup> defines the term "dwelling" but not "property". This tends to suggest that it is not necessary to interpret property in this restrictive way for breach of the peace.

Moreover, it is also evident from Watkins LJ's discussion of the power to arrest for a breach of the peace in *Howell* that he did not intend limiting the meaning of "property" to dwelling-houses or "message". His Lordship referred to a police constable's primary duty to "prevent the commission of crime" and "keep the peace"<sup>119</sup> which, of course, includes protecting "property",<sup>120</sup> and continued:

"To deny ... the right to arrest a person who he reasonably believes is about to breach the peace would be to disable him from preventing that which might cause serious injury to someone or even to many people or to property." <sup>121</sup>

The reference here to "property" was unqualified, but in both the two "definitions" of breach of the peace identified in *Howell*, Watkins LJ appeared to restrict the extent to which harm to property may constitute a breach of the peace to circumstances where the property is "in the presence of its owner". In addition, his Lordship stated:

"There is nothing more likely to arouse resentment and anger...and a desire to take instant revenge, than attacks or threatened attacks upon a person's body or property." <sup>122</sup>

Accordingly, it has often been considered that the potential for harm to property is only significant in so far as it leads to harm to persons.<sup>123</sup> However, it is submitted that this is a misinterpretation of the judgment. First, Watkins LJ located his description of breach of the peace squarely within the "evolving process of the development of ... the common law".<sup>124</sup> His Lordship was not advocating a radical departure from tradition. The common law has long provided that the public as well as the police have an obligation to intervene to prevent a breach of the peace, even if that is an "imperfect obligation",<sup>125</sup> and there seems no reason to believe that the community's obligation is restricted only to protecting property in the presence of its owner.<sup>126</sup>

Secondly, as it is not clear that Watkins LJ intended to provide a full definition of breach of the peace, his comments regarding property should not be read in isolation and accorded undue significance. For example, as we have seen, his \*Crim. L.R. 842 Lordship referred to a breach of the peace where there was the threat of injury to property without any express reference to "an owner's presence". 127 Accordingly, it is contended that the reference to harm to property in an "owner's presence" and "the desire to take revenge" were not intended as definitive but, rather, to stand as examples of violent conduct that would constitute a breach of the peace, alongside the examples listed at common law of assault, affray, riot and unlawful assembly.<sup>128</sup>

## **"This isn't violence!"—a broad or a narrow interpretation of "violence"?**

The contention that harm to property, without the need for the presence of an owner, should be sufficient "violence" to constitute a breach of the peace ought not to be surprising. This reflects the common usage of this "ordinary English word",<sup>129</sup> which is defined broadly by the *Oxford English Dictionary* as the "deliberate exercise of physical force against a person or property"<sup>130</sup> and the "common sense" roots of breach of the peace referred to by Supperstone.<sup>131</sup> However, the meaning of the term is not entirely transparent and at this point it is worth returning to the Black Bloc, as an important aspect of their actions is that most activists assert that property destruction does not amount to violence. Some do acknowledge their actions are violent but contend that they are justified self-defence<sup>132</sup> against "structural violence"<sup>133</sup> imposed on people by the state. However, more activists as Zúquete has observed, "reconceptualise" violence in order to justify property damage as an essentially "non-violent" activity.<sup>134</sup> This reconceptualising of violence is largely on the grounds that "property feels no pain"<sup>135</sup> or "you can't be violent to an inanimate object".<sup>136</sup> For these activists an action is non-violent if it does not involve "any direct physical harm to human beings"<sup>137</sup> and, therefore, they insist that property damage is always non-violent. For example, armed with hammers and crowbars, Black Bloc protestors were responsible for much of the property damage that followed President Trump's inauguration, which was justified in these simple terms: "Property damage is not violence...Violence against other people is violence".<sup>138</sup>

On the face of it, referring to damaging property as non-violent appears to be a simple misnomer because, as we have seen, the accepted meaning of "violent" includes both harm to persons and property. However, Baroness Hale stated recently in a domestic violence case, *Yemshaw v Hounslow LBC*,<sup>139</sup> that "violence" is "not a term of art":

"It is capable of bearing several meanings and applying to many different types of behaviour. These can change and develop over time. There is no comprehensive definition .... " <sup>140</sup>

Sociologists have likewise struggled with the concept and, in common with the Black Bloc, have defined it only in terms of physical violence.<sup>141</sup> However, such limited definitions have also been met with criticism within the discipline. As Jackman has observed, to define violence without reference to property does not "encapsulate...the full assortment of injuries that humans find consequential", which include "material outcomes such as the destruction, confiscation, or defacement of property".<sup>142</sup> Indeed, the omission of property damage from a definition of violence seems particularly surprising because, as Jackman has stated, for those affected by it, property damage is "routinely acknowledged as some of the terrible costs of terrorism and war with profound material, psychological, and social repercussions".<sup>143</sup> However, whatever the position taken by

the Black Bloc or within the discipline of sociology, we must return to how "violence" has been interpreted in law.

The reference to the "presence of the owner" in *Howell* has been commonly interpreted as meaning that property damage is not sufficient violence on its own for a breach of the peace. However, the decision of the European Court of Human Rights in *Steel v United Kingdom* 144 is a notable exception. The judgment has been criticised for "failing to accurately distill" the law contained in *Howell* 145 but, it appears that, on the contrary, the Strasbourg Court provided a cogent analysis of the law that captured accurately its common law flexibility—that of a "description" or a partial definition of breach of the peace. Thus, the Court observed that the concept of breach of the peace had been clarified to such an extent that it was "sufficiently" established that a breach of the peace would be committed:

"Only when an individual causes harm, or appears likely to cause harm, to property or acts in a manner the natural consequence of which would be to provoke others to violence."<sup>146</sup>

It is also evident from this that the Strasbourg Court did not confine harm to property to circumstances where the owner is present and it is submitted that, rather than an oversight or misunderstanding, this was the result of insight into the nature \*Crim. L.R. 844 of the law on breach of the peace.<sup>147</sup> That is, the Court interpreted "violence" broadly, so that it included harm to persons but also to property, without further qualification.

When the Law Commission reviewed public order law in the *Criminal Law: Offences Relating to Public Order (No.123)* report that led to the Public Order Act 1986, it considered whether "breach of the peace" should remain an element in public order offences.<sup>148</sup> The Commission referred to the usual interpretation of Watkins LJ's judgment in *Howell*, but doubted that the presence of an owner was required for damage to property to amount to violence for the purposes of breach of the peace,<sup>149</sup> and accepted the dictionary definition of the term "violence" as the primary meaning at common law.<sup>150</sup> Accordingly, the definition in cl.8(1) of the Law Commission's Draft Public Order Bill did not require property to be in the presence of an owner and the Law Commission even extended the meaning of violence to conduct that did not actually cause injury or damage:

"'violence' means any violent conduct, so that – (a) except in the context of affray, it includes violent conduct towards property as well as violent conduct towards persons, and (b) it is not restricted to conduct causing or intended to cause injury or damage but includes any other violent conduct (for example throwing at or towards a person a missile of a kind capable of causing injury which does not hit or falls short)."

The Public Order Act 1986 that followed was a more radical revision of the law than envisaged by the Law Commission<sup>151</sup> but, nevertheless, included many of the Law Commission's recommendations. Thus, the definition of "violence" contained in s.8, which applies to all offences under the 1986 Act except for affray, is in the same terms as cl.8(1). This also largely reflects the common law position, as both riot and unlawful assembly could be committed where there was violence to property and to the person,<sup>152</sup> and it would be surprising if the position was different for a breach of the peace.

A broad interpretation of the term "violence" may also be found more recently in the common law. In *Antonelli v Secretary of State for Trade and Industry*,<sup>153</sup> Beldam LJ regarded it as self-evident that setting fire to property was "violence" and that there was no justification for confining the term to "violence to the person".<sup>154</sup> Likewise, in *Yemshaw v Hounslow LBC* 155 Baroness Hale declined to accept an interpretation limited to "physical violence": \*Crim. L.R. 845

"I can readily accept that this is *a* natural meaning of the word.... But I do not accept that it is *the only* natural meaning of the word." 156

It is respectfully submitted that this is correct and that "violence" is an ordinary English word that must be interpreted broadly so as to include harm to property as well as to the person. That is consistent with the judgment in *Steel v United Kingdom* 157 but also, perhaps more importantly, reflects its meaning in public order legislation and how the term was interpreted at common law.

## Conclusion

The purpose of this article has been to consider the meaning of breach of the peace in the light of recent developments in the nature of protest and, in particular, the Black Bloc phenomenon. Following the approval of the *Howell* 158 judgment in *Laporte* 159 it has become well-established that the essence of the doctrine of breach of the peace is violence or the threat of violence, but what has been less clear is whether violence to property on its own is sufficient for a breach of the peace, and whether the presence of an owner is required. This law was left untouched by the Supreme Court's recent decision in *R. (on the application of Hicks) v Commissioner of Police for the Metropolis* 160 and, plainly, it is highly unsatisfactory for a doctrine at the heart of public order law in England and Wales to remain uncertain to this extent.

In general, *Howell* 161 has been interpreted as providing that only violence to property in the presence of an owner is sufficient violence. However, it has been argued here that this is a significant misinterpretation of *Watkins LJ's* judgment in *Howell* . Moreover, the changes in the nature of protesting since the millennium, which have seen things "kicking off everywhere",<sup>162</sup> have highlighted the difficulties this misinterpretation can cause in terms of preserving public order. Black Blocs, the most prominent example of changes that have occurred in protest, have developed "a new language of civil disobedience".<sup>163</sup> They do not regard property damage as violence and their principal protest strategy is to engage in "non-violent warfare" against corporate property, while "eschewing any direct physical harm" to persons.<sup>164</sup> Therefore, where the police are aware that the Black Bloc intend to damage corporate property at a protest "in the near future", but to be otherwise non-violent, they are presented with a problem if, rather than utilising their statutory powers, they rely on the common law power to prevent a breach of the peace. According to the usual interpretation of *Howell* , they are unable to intervene to prevent a breach of the peace if the property owner is absent. The police may act if violence, in the sense of physical harm to persons, is anticipated in the near future, or if a criminal offence is "about to" be committed, but are otherwise restricted in their actions.

In view of the danger of escalating violence at demonstrations and human rights concerns in relation to other protestors, it is submitted that the power to arrest for a breach of the peace should not be contingent on the presence of the owner, where there is the reasonable likelihood of a threat of property damage in the near future.<sup>165</sup> It is to be hoped that, in the absence of legislative reform, the courts will review this uncertain area of the law at the earliest opportunity.

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## Footnotes

1

*R. (on the application of Hicks) v Commissioner of Police for the Metropolis* [2017] UKSC 9; [2017] A.C. 256 .

2

Under the European Convention for the Protection of Human Rights and Fundamental Freedoms art.5 (the ECHR).

3

*R. (on the application of Laporte) v Chief Constable of Gloucestershire Constabulary* [2006] UKHL 55; [2007] 2 A.C. 105; [2007] H.R.L.R. 13 (p.316) at [27].

4

*Howell* [1982] Q.B. 416; (1981) 73 Cr. App. R. 31 .

5

*Howell* [1982] Q.B. 416 at 427; *Laporte* [2006] UKHL 55; [2007] 2 A.C. 105; [2007] H.R.L.R. 13 (p.316) at [27].

6

*J. Beggs, G. Thomas and S. Rickard, Public Order Law and Practice* (Oxford: Oxford University Press, 2012), p.50.

7

For example, this argument is referred to in passing, but not discussed in detail, in A.T.H. Smith, "Law Commission Working Paper No. 82 – Offences Against Public Order" [1982] Crim L.R. 483, 494 and *J. Beggs, G. Thomas and S. Rickard, Public Order Law and Practice* (Oxford: Oxford University Press, 2012), p.50.

8

R. Stone, "Breach of the Peace: the case for Abolition" (2001) 2 Web. J.C.L.I. 3, <http://www.bailii.org/uk/other/journals/WebJCLI/2001/issue2/index.html> [Accessed 17 August 2017].

9

E.g. the "*Philips Report*", *The Royal Commission on Criminal Procedure Report* (1981), Cm.8092 (London: HM Stationery Office); the Law Commission report, *Offences Relating to Public Order No.123*, HC 85 (HMSO, 1983); the Home Office Green Paper, *Policing: Modernising Police Powers to Meet Community Needs* (2004), [www.statewatch.org/news/2004/aug/police-powers-consult.pdf](http://www.statewatch.org/news/2004/aug/police-powers-consult.pdf) [Accessed 17 August 2017].

10

Clause 101(4) abolished the common law power to arrest for a breach of the peace.

11

*A.T.H. Smith, Offences Against Public Order* (London: Sweet & Maxwell, 1987), p.181.

12

*College of Policing, Public order: core principles and legislation*, <https://www.app.college.police.uk/app-content/public-order/core-principles-and-legislation/> [Accessed 17 August 2017].

13

Although in recent years, some forces have also utilised dispersal orders under the Anti-social Behaviour, Crime and Policing Act 2014 s.35

14

*H. Fenwick, Fenwick on Civil Liberties and Human Rights 5th edn (Abingdon: Routledge, 2017)*, p.554.

15

A 39% increase in police recorded offences compared with 2014–15 and following an increase of 28% in the previous year: *Crime in England & Wales: year ending Mar 2017, Office for National Statistics Statistical Bulletin, 20 July 2017*, <https://www.ons.gov.uk/releases/crimeinenglandandwalesyearendingmarch2017> [Accessed 17 August 2017].

16

*College of Policing: Three Years On, House of Commons Home Affairs Committee, Fourth Report of Session 2016–17, HC Paper No.23*, p.8. <http://www.publications.parliament.uk/pa/cm201617/cmselect/cmhaff/23/23.pdf>; *Adapting to Protest – Nurturing the British Model of Policing (London: Central Office of Information, 25 November 2009)*, <http://www.hmic.gov.uk/media/adapting-to-protest-20090705.pdf> [Accessed 17 August 2017].

17

*Della Porta, Peterson and Reiter, "Policing Transnational Protest: An Introduction" in Della Porta, Peterson and Reiter (eds), The Policing of Transnational Protest (Aldershot: Ashgate, 2006)*, p.4.

18

Tilly categorises protestors as "transgressive" if they employ innovative tactics and are uncooperative with the police: C. Tilly, "Spaces of Contention" (2000) *Mobilization: An International Journal* 5(2) 135, 138.

19

Tilly's concept of "repertoires of contention" highlights that social movements have a range of forms of protest action in a given historical period: C. Tilly, "Contentious Repertoires in Great Britain, 1758-1834" in M. Traugott (ed.), *Repertoires and Cycles of Collective Action (Durham, NC, 1995)*, p.26.

20

*J. Noakes and P.F. Gillham, "Aspects of the "New Penology" in the Police Response to Major Political Protests in the United States, 1999-2000" in Della Porta, Peterson and Reiter (eds), The Policing of Transnational Protest (Aldershot: Ashgate Publishing Ltd, 2006)*, p.105.

21

E.g. R. Ramgobin, "Student protest: demonstrators dispute the actions of Black Bloc anarchists after violence erupts", *Independent*, 5 November 2015, <http://www.independent.co.uk/news/uk/politics/student-protest-demonstrators-dispute-the-actions-of-black-bloc-anarchists-after-violence-erupts-a6722036.html> [Accessed 17 August 2017].

22

J. Huggler, *Anti-capitalist protestors with homemade weapons converge on Hamburg ahead of G20 summit*, *The Telegraph*, <http://www.telegraph.co.uk/news/2017/07/04/anti-capitalist-protestors-homemade-weapons-converge-hamburg/> [Accessed 17 August 2017].

23

The test is the same, *Laporte* [2006] UKHL 55; [2007] 2 A.C. 105; [2007] H.R.L.R. 13 (p.316) at [29].

24

A breach of the peace does not have to be "imminent" in the sense of being "about to" be or on the verge of happening before the police may intervene. After a period of uncertainty, Lord Rodger's opinion in *Laporte* [2006] UKHL 55; [2007] 2 A.C. 105; [2007] H.R.L.R. 13 (p.316) is now definitive on this issue: *Hicks* [2017] UKSC 9; [2017] A.C. 256 at [4].

25

R. Amster, *Anarchism Today* (Santa Barbara, CA: ABC-CLIO, LLC, 2012), p.31.

26

In accordance with the Police and Criminal Evidence Act 1984 s.24 .

27

*Howell* [1982] Q.B. 416; (1981) 73 Cr. App. R. 31 .

28

F. Dupuis-Déri, "The black blocs ten years after Seattle" (2010) 4(2) *Journal for the Study of Radicalism* 45, 51.

29

E. Yuen, "Introduction" in E. Yuen et al. (ed.), *The Battle of Seattle: The New Challenge to Capitalist Globalization*, (New York: Soft Skull Press, 2001), p.11. See generally: G. Katsiaficas, *The Subversion of Politics: European Autonomous Social Movements and the Decolonization of Everyday Life* (Oakland CA: AK Press, 2006).

30

F. Dupuis-Déri, "The black blocs ten years after Seattle" (2010) 4(2) *Journal for the Study of Radicalism* 45, 46.

31

The first "classical phase" emerged in the mid-nineteenth century and there was a "mid-level" period in the 1960s and 1970s: J. Pedro Zúquete, "World War A: contemporary anarchists and extreme left perpetrators" in M. Fredholm (ed.), *Understanding Lone Actor Terrorism* (Abingdon: Routledge, 2016), p.46.

32

These may be defined as a small, autonomous unit of activists who are bonded together by mutual trust, friendship and a shared sense about the kinds of action they wish to take, F. Dupuis-Déri, "Anarchism and the Politics of Affinity groups" (2010) 18(1) *Anarchist Studies* 40, 40.

33

Infoshop.org, "*Black Blocs for Dummies*" webpage, D. Graeber, *Direct Action: an Ethnography* (Oakland CA: AK Press, 2009), p.406. See also <http://la.indymedia.org/news/2000/08/2397.html> [Accessed 17 August 2017].

34

F. Dupuis-Déri, "The black blocs ten years after Seattle" (2010) 4(2) *Journal for the Study of Radicalism* 45, 46.

35

*Dupuis-Deri, Who's afraid of the Black Blocs? (2014), p.3.*

36

*Amster, Anarchism Today (2012), p.30.*

37

S. Sullivan, "We are heartbroken and furious!" Engaging with violence in the (anti-)globalisation movement(s) CSGR Working Paper No.123/03, p.30, <http://wrap.warwick.ac.uk/1981/> [Accessed 17 August 2017].

38

*Commander B. Broadhurst quoted in J. Brown, Independent, 27 March 2011, "Recriminations fly after anti-cuts protests descend into violence", <http://www.independent.co.uk/news/uk/home-news/recriminations-fly-after-anti-cuts-protests-descend-into-violence-2254755.html> [Accessed 17 August 2017].*

39

*P. Oltermann, "Hamburg counts the cost of two nights of violence, looting and destruction", The Observer, 9 July 2017, <https://www.theguardian.com/world/2017/jul/08/hamburg-counts-cost-two-nights-of-violence-looting-destruction> [Accessed 17 August 2017].*

40

*A. Travis, "Cuts protest: Theresa May to review police powers in aftermath of clashes", The Guardian, 28 March 2011.*

41

J. Goodwin, "Introduction to a special issue on political violence and terrorism: political violence as contentious politics" (2012) 17(1) *Mobilization: An International Journal* 1.

42

Sullivan, "We are heartbroken and furious!" Engaging with violence in the (anti-)globalisation movement(s) CSGR Working Paper No.123, p.13. The violence is symbolic in the sense that it is intended to convey a certain meaning rather than in Bourdieu's technical sense of "symbolic violence", *Male Domination* (Cambridge: Polity, 2001), pp.1–2.

43

*J.S. Juris, Networking Futures: the Movements Against Corporate Globalization* (Durham: Duke University Press, 2008), pp.166 and 181.

44

*J. Pedro Zúquete, "World War A: contemporary anarchists and extreme left perpetrators" in M. Fredholm, (ed.) Understanding Lone Actor Terrorism* (Abingdon: Routledge, 2016), p.52.

45

E.g. the alleged use of sweatshop labour by Gap and destruction of the tropical rainforest by McDonald's, which have been attacked regularly and were listed as targets in the ACME Collective's "N30 Black Bloc Communique" produced in *E. Yuen et al. (eds), The Battle of Seattle: The New Challenge to Capitalist Globalization* (New York: Soft Skull Press, 2001), pp.115–119.

46

*J. Ferrell, Tearing Down the Streets: Adventures in Urban Anarchy* (New York: Palgrave, 2001), p.234.

47

Reproduced in *Yuen et al. (eds), The Battle of Seattle: The New Challenge to Capitalist Globalization* (2001), p.118.

48

Reproduced in *Yuen et al. (eds), The Battle of Seattle: The New Challenge to Capitalist Globalization* (2001), p.117.

49

*P. Marshall, Demanding the Impossible: a History of Anarchism* (London: Harper Collins, 2008), p.699.

50

*Amster, Anarchism Today* (2012), p.31.

51

*Graeber, Direct Action: an Ethnography* (2009), p.224.

52

*J.S. Juris, Networking Futures: the Movements Against Corporate Globalization* (Durham: Duke University Press, 2008), p.38.

53

Dupuis-Déri, "The black blocs ten years after Seattle" (2010) 4(2) *Journal for the Study of Radicalism* 45, 47–49. E.g. at the G20 Summit in Hamburg: *P. Oltermann, "G20: Putin denies US election interference in meeting with Trump, officials say — as it happened", The Guardian, 7 July*

2017, <https://www.theguardian.com/world/live/2017/jul/07/g20-summit-trump-and-putin-to-meet-as-world-leaders-gather-in-hamburg-live-coverage?page=with%3Ablock-595f9c4be4b042dfbe78ae2a> [Accessed 17 August 2017].

54

*P. Marshall, Demanding the Impossible: a History of Anarchism (London: Harper Collins, 2008), p.699; Graeber, Direct Action: an Ethnography (2009), p.468; Juris, Networking Futures: the Movements Against Corporate Globalization (2008), pp.180–183; Dupuis-Deri, Who's Afraid of the Black Blocs? (2014), p.137; Amster, Anarchism Today (2012), p.58.*

55

D. Graeber, "The new anarchists" (January-February 2002) 13 New Left Review 61, 66; see also on "non-violent warfare": *S. Critchley, Infinitely Demanding: Ethics of Commitment, Politics of Resistance (London: Verso, 2012), pp.123–124.*

56

*D. Mead, The New Law of Peaceful Protest: Rights and Regulation in the Human Rights Act Era (Oxford: Hart Publishing, 2010), p.319*

57

*Albert v Lavin [1982] A.C. 546 .*

58

Criminal Law Act 1967 s.2(7) . The 1967 Act abolished the categories of felonies and misdemeanours and converted the common law power for both constables and citizens to arrest for a felony about to happen to a power only for constables to arrest for an arrestable offence about to happen. This was replicated in s.24 of the Police and Criminal Evidence Act 1984 .

59

*Beggs, Thomas and Rickard, Public Order Law and Practice (2012), p.50.*

60

*Howell [1982] Q.B. 416; (1981) 73 Cr. App. R. 31 .*

61

Property damage suffices for riot and violent disorder ( ss.1 and 2 ), but other elements may not be satisfied.

62

*M. Zander, Zander on PACE, 7th edn (London: Sweet & Maxwell, 2015), paras 3.09–3.19.*

63

Under the Criminal Law Act 1977 s.1 .

64

Under the Criminal Justice and Public Order Act 1994 s.68.

65

Crimethinc Collective, Blocs: Black and Otherwise: <https://crimethinc.com/2003/11/20/blocs-black-and-otherwise> [Accessed 25 September 2017].

66

J. Jowitt and M. Taylor, "Police arrest 114 people in pre-emptive strike against environmental protestors", Guardian 13 April 2009 <https://www.theguardian.com/environment/2009/apr/13/nottingham-police-raid-environmental-campaigners> [Accessed 25 September 2017].

67

*Juris, Networking Futures: the Movements Against Corporate Globalization (2008), p.167.*

68

I am grateful to P.A.J. Waddington for this observation.

69

*Dupuis-Deri, Who's Afraid of the Black Blocs? (2014), p.66.*

70

*Hicks [2017] UKSC 9; [2017] A.C. 256 ; Laporte [2006] UKHL 55; [2007] 2 A.C. 105; [2007] H.R.L.R. 13 (p.316); Austin v Commissioner of Police of the Metropolis [2009] UKHL 5; [2009] 1 A.C. 564; [2009] H.R.L.R. 16 (p.412).*

71

These are often closely associated— art.10 is the *lex generalis* and art.11 a *lex specialis*: *Ezelin v France (1992) 14 E.H.R.R. 362 (p.362) at [37]; Laporte [2006] UKHL 55; [2007] 2 A.C. 105; [2007] H.R.L.R. 13 (p.316) at [36] and [85].*

72

That is, incapable of restriction or exceptions, e.g. the art.3 prohibition on torture.

73

*Kudrevičius v Lithuania (2016) 62 E.H.R.R. 34 (p.1107) at [92]; Stankov v Bulgaria App. No.29225/95, 2 October 2001 at [77].*

74

E.g. The Trades Union Congress had intended their protest march on 26 March 2011 to be "family friendly" but after Black Blocs infiltrated the march, attacking banks and shops, the General Secretary feared that the message of the march had been "clouded by what else had happened": *Chittenden, Henry and Kinchen, "Anarchist Thugs mar union march", Sunday Times, 27 March 2011.*

75

*R. (on the application of Gallestegui) v Westminster City Council* [2013] EWCA Civ 28; [2013] 1 W.L.R. 2377; [2013] H.R.L.R. 15 (p.283); *R. (on the application of Barda) v Mayor of London* [2015] EWHC 3584 (Admin); [2016] 4 W.L.R. 20 ; *Maguire v United Kingdom* (2015) 60 E.H.R.R. SE12 (p.333) at [45].

76

*Plattform Ärzte für das Leben v Austria* (1988) 13 E.H.R.R. 204 at [32] and [34]; *Djavit An v Turkey* (2005) 40 E.H.R.R. 45 at [57].

77

*Karahmed v Bulgaria* App. No.30587/13, 24 February 2015 at [96]; *Austin v United Kingdom* (2012) 55 E.H.R.R. 14 (p.359) at [55].

78

*Christians Against Racism and Fascism (CARAF) v United Kingdom* App. No.8440/78, 16 July 1980 at [147]–[148]; *Ezelin v France* (1992) 14 E.H.R.R. 362 at [34].

79

*A review of national police units which provide intelligence on criminality associated with protest (HMIC, 2012), p.6, <http://www.justiceinspectorates.gov.uk/hmic/publications/review-of-national-police-units-which-provide-intelligence-on-criminality-associated-with-protest-20120202/> [Accessed 17 August 2017].*

80

*Howell* [1982] Q.B. 416; (1981) 73 Cr. App. R. 31 .

81

*Smith v Donnelly* 2001 S.L.T. 1007; 2001 S.C.C.R. 800 .

82

*Williamson v Chief Constable of West Midlands Police* [2003] EWCA Civ 337; [2004] 1 W.L.R. 14 at 19. Even if it is treated as such for the purposes of the European Convention on Human Rights : *Steel v United Kingdom* (1999) 28 E.H.R.R. 603 .

83

*Michael v Chief Constable of South Wales Police* [2015] UKSC 2; [2015] A.C. 1732; [2015] H.R.L.R. 8 (p.295) at [29]–[35]; *Glasbrook Bros Ltd v Glamorgan CC* [1925] A.C. 270 at 277 ; G. Williams, "Preventive Justice and the Rule of Law" (1953) 16(4) M.L.R. 417, 418. See also *Halsbury's Laws of England, 5th edn* (2013), Vol.84, para.40 and the revised attestation made by constables provided for by Police Reform Act 2002 s.83 .

84

G. Williams, "Arrest for Breach of the Peace" [1954] Crim. L.R. 578, 578.

85

*M. Supperstone, Brownlie's Law of Public Order and National Security* (London: Butterworths, 1981), p.1.

86

*D. Feldman, Civil Liberties and Human Rights in England and Wales (Oxford: Oxford University Press, 2002), p.1018.*

87

As noted in *Austin v Commissioner of Police of the Metropolis [2005] EWHC 480 (QB); [2005] H.R.L.R. 20 (p.647) at [121].*

88

As was stated, for many years, in the police officer's handbook *Moriarty's Police Law*, e.g. *W.J. Williams, Moriarty's Police Law, 17th edn (London: Butterworths, 1963), p.218.*

89

*Jarrett v Chief Constable of West Midlands Police [2003] EWCA Civ 397; [2003] Po. L.R. 87 at [23].*

90

*Redmond-Bate v DPP [2000] H.R.L.R. 249 at 255; Grant v Moser (1843) 5 Man. & G. 123 at 130.*

91

*Wooding v Oxley (1839) 9 Car. & P. 1 at 5.*

92

*Lockley (1864) 4 F. & F. 155 at 159.*

93

*Jordan v Gibbon (1863) 3 F. & F. 607 at 613.*

94

*Howell [1982] Q.B. 416; (1981) 73 Cr. App. R. 31 .*

95

*Percy v DPP [1995] 3 All E.R. 124 at 131. Or, at least, it is "sufficiently established": Steel (1999) 28 E.H.R.R. 603 at [55].*

96

*Laporte [2006] UKHL 55; [2007] 2 A.C. 105; [2007] H.R.L.R. 13 (p.316) at [27]. This contrasts with Glanville Williams's view that the essence of breach of the peace is "some danger to the person": "Arrest for Breach of the Peace" [1954] Crim. L.R. 578, 579.*

97

See above fn.5 and accompanying text.

98

*Laporte [2006] UKHL 55; [2007] 2 A.C. 105; [2007] H.R.L.R. 13 (p.316) at [27] but also in earlier authority, e.g. Foulkes v Chief Constable of Merseyside [1998] 3 All E.R. 705 at 710; Jarrett [2003] EWCA Civ 397; [2003] Po. L.R. 87 at [22] and DPP v Orum [1989] 1 W.L.R. 88 at 94.*

99

*Howell [1982] Q.B. 416 at 426.*

100

*Law Commission, Criminal Law: Offences Relating to Public Order No.123 (1983), HC Paper No.85, paras 5.14 and 5.44.*

101

*Review of Public Order Law Report (1985), Cm.9510, para.6.13.*

102

K. Reid and D. Nicolson, "Arrest for breach of the peace and the European Convention on Human Rights" [1996] Crim. L.R. 764, 767.

103

See above fn.5 and accompanying text.

104

*Chief Constable of Devon and Cornwall Constabulary Ex p. Central Electricity Generating Board [1982] Q.B. 458 .*

105

Accepted as authoritative in a number of cases, e.g. *Hawkes v DPP [2005] EWHC 3046 (Admin)* at [11]; *G v Chief Superintendent of Stroud Police (1988) 86 Cr. App. R. 92* at 95.

106

*Howell [1982] Q.B. 416 at 426.*

107

Reid and Nicolson, "Arrest for breach of the peace and the European Convention on Human Rights" [1996] Crim. L.R. 764, 767. See also: *R. Card, Public Order Law (Bristol: Jordans, 2000), para.2.4.*

108

It is evident that a narrow interpretation of the violence required was not adopted in *Laporte [2006] UKHL 55; [2007] 2 A.C. 105; [2007] H.R.L.R. 13 (p.316)* at [27]. The reference to "other disturbance" also appears consistent with this interpretation: *Card, Public Order Law (Jordans, 2000), para.2.4.*

109

H. Fenwick, "Marginalising human rights: breach of the peace, kettling, the Human Rights Act 1998 and public protest" [2009] P.L. 737, 753. And contrary to the opinions of Lawton LJ and Templeman LJ, *Chief Constable of Devon and Cornwall Constabulary, Ex p. Central Electricity Generating Board [1982] Q.B. 458 , 476 and 479.*

110

"There is a breach of the peace whenever a person who is lawfully carrying out his work is unlawfully and physically prevented by another from doing it", *Chief Constable of Devon and Cornwall Constabulary, Ex p. Central Electricity Generating Board* [1982] Q.B. 458 at 471.

111

*Feldman, Civil Liberties and Human Rights in England and Wales* (2002), p.1019.

112

G. Williams, "Arrest for Breach of the Peace" [1954] Crim. L.R. 578.

113

As in *Ingle v Bell* (1836) 1 M. & W. 516 ; G. Williams, "Arrest for Breach of the Peace" [1954] Crim. L.R. 578, 579.

114

*Feldman, Civil Liberties and Human Rights in England and Wales* (2002), p.1019.

115

G. Williams, *Textbook of Criminal Law, 2nd edn* (London: Stevens & Sons, 1983), p.487.

116

When, for example, he refers to "threatened attacks upon a person's body or property": *Howell* [1982] Q.B. 416 at 426.

117

A.T.H. Smith, *Offences Against Public Order* (London: Sweet & Maxwell, 1987), p.56; See also *Mitsui Sumitomo Insurance Co (Europe) Ltd v Mayor's Office for Policing and Crime* [2013] EWHC 2734 (Comm); [2014] 1 All E.R. 422 at [69] and [2016] UKSC 18; [2016] A.C. 1488 . The definition contained in s.10 of the Criminal Damage Act 1971 , may also be regarded as reflecting the ordinary meaning of the term: "In this Act "property" means of a tangible nature, whether real or personal, including money".

118

*Smith, Offences Against Public Order* (1987), p.6.

119

*Howell* [1982] Q.B. 416 at 426.

120

*Michael v Chief Constable of South Wales Police* [2015] UKSC 2; [2015] A.C. 1732; [2015] H.R.L.R. 8 (p.295) at [29]–[35]; *Glasbrook* [1925] A.C. 270 277 ; G. Williams, "Preventive Justice and the Rule of Law" (1953) 16(4) M.L.R. 417, 418. See also *Halsbury's Laws of England, 5th edn* (2013), Vol.84, para.40 and the revised attestation made by constables provided for by Police Reform Act 2002 s.83 .

121

*Howell* [1982] Q.B. 416 at 426.

122

*Howell [1982] Q.B. 416 at 426.*

123

E.g. *Percy v DPP [1995] 3 All E.R. 124 at 131.*

124

*Howell [1982] Q.B. 416 at 427.*

125

*Albert v Lavin [1982] A.C. 546 at 565 per Lord Diplock. See also Sir C.K. Allen, The Queen's Peace (London: Stevens & Sons, 1953), p.69.*

126

Moreover, a common law obligation to protect property and not just persons is evident in the related "liability of the hundred", which requires the local community to "share the burden of keeping the peace and of the misfortune of loss or injury" by standing surety in the event of a riot: *Mitsui Sumitomo Insurance Co (Europe) Ltd v Mayor's Office for Policing and Crime [2016] UKSC 18; [2016] A.C. 1488* . See also *Allen, The Queen's Peace (1953), pp.81–84.*

127

See fn.121 and accompanying text.

128

This is consistent with *Watkins LJ's* partial reliance on Lord Parker CJ's description of breach of the peace in [Gelberg v Miller \[1961\] 1 W.L.R. 153](#) at 158 as "some affray or violence or possibly disturbance", which is reflected in his two "definitions".

129

*Nash (t/a Dino Services Ltd) v Prudential Assurance Co Ltd [1989] 1 All E.R. 422 at 426 CA.*

130

*OED Online (Oxford University Press, June 2017).*

131

*M. Supperstone, Brownlie's Law of Public Order and National Security (London: Butterworths, 1981), p.1.*

132

*J. Pedro Zúquete, "Hell Yes, We're Fighting! Revolutionary Anarchism's Call for Destruction and Creation" in G. Michael, Extremism in America (Gainesville: University Press of Florida, 2015), p.58.*

133

*J. Pedro Zúquete, "World War A: contemporary anarchists and extreme left perpetrators" in M. Fredholm (ed.), Understanding Lone Actor Terrorism (Abingdon: Routledge, 2016), p.49. P. Bourgois defines it as "chronic, historically-entrenched political-economic oppression and social inequality" in*

"The power of violence in war and peace" (2001) 2(1) *Ethnography* 5, 8. However, the phrase is attributed to J. Galtung, "Violence, peace and peace research" (1969) 6 *Journal of Peace Research* 167.

134

Zúquete, "World War A: contemporary anarchists and extreme left perpetrators" in Fredholm (ed.), *Understanding Lone Actor Terrorism* (2016), p.52.

135

Graffiti written on a wall during the World Trade Organisation disturbances in 1999 in Seattle, where the Black Bloc played a prominent role, Dupuis-Deri, *Who's afraid of the Black Blocs?* (2014), p.79.

136

Graeber, *Direct Action: an Ethnography* (2009), p.177.

137

Graeber, "The new anarchists" (January-February 2002) 13 *New Left Review* 61, 66.

138

P. Hermann, K.L. Alexander and M.E. Miller, "Protestors who destroyed property on Inauguration Day were part of well-organized group", *The Washington Post*, 21 January 2017, [https://www.washingtonpost.com/local/public-safety/protesters-who-destroyed-property-on-inauguration-day-part-of-well-organized-group/2017/01/21/096678c8-dfeb-11e6-ad42-f3375f271c9c\\_story.html?utm\\_term=.70dc44bad26a](https://www.washingtonpost.com/local/public-safety/protesters-who-destroyed-property-on-inauguration-day-part-of-well-organized-group/2017/01/21/096678c8-dfeb-11e6-ad42-f3375f271c9c_story.html?utm_term=.70dc44bad26a) [Accessed 17 August 2017].

139

*Yemshaw v Hounslow LBC* [2011] UKSC 3; [2011] 1 W.L.R. 433; [2011] H.L.R. 16 (p.251).

140

*Yemshaw* [2011] UKSC 3; [2011] 1 W.L.R. 433; [2011] H.L.R. 16 (p.251) at [27].

141

See the discussion in M. Jackman, "Violence in social life" (2002) 28 *Annual Review of Sociology* 347, 388.

142

Jackman, "Violence in social life" (2002) 28 *Annual Review of Sociology* 347, 393.

143

Jackman, "Violence in social life" (2002) 28 *Annual Review of Sociology* 347, 395.

144

*Steel v United Kingdom* (1999) 28 E.H.R.R. 603.

145

*Mead, The New Law of Peaceful Protest: Rights and Regulation in the Human Rights Act Era (2010)*, p.360.

146

*Steel v United Kingdom (1999) 28 E.H.R.R. 603* at [27] and [55].

147

The omission of reference to an owner's presence does not always appear to have been noticed where *Steel* has been cited in caselaw, e.g. in *Laporte [2006] UKHL 55*; *[2007] 2 A.C. 105*; *[2007] H.R.L.R. 13 (p.316)* at [137] in *R. (on the application of Hicks) v Commissioner of Police for the Metropolis [2014] EWCA Civ 3* at [40].

148

As in the Public Order Act 1936 .

149

Damage to property "may well be restricted" to these circumstances, but it implied it was not certain: para.5.44.

150

*Law Commission, Criminal Law: Offences Relating to Public Order No.123 (1983)*, paras 5.31–5.32.

151

*Smith, Offences Against Public Order (1987)*, p.26.

152

It is also arguable that affray could be committed by damage to property, as the essence of the offence was that two or more persons were fighting "to the terror of the Queen's subjects", which could be caused by property damage: *M. Supperstone, Brownlie's Law of Public Order and National Security, (London: Butterworths, 1981)*, pp.121–123 and 140–143.

153

*Antonelli [1998] Q.B. 948* .

154

*Antonelli [1998] Q.B. 948* at 961.

155

*Yemshaw [2011] UKSC 3*; *[2011] 1 W.L.R. 433*; *[2011] H.L.R. 16* (p.251).

156

*Yemshaw [2011] UKSC 3*; *[2011] 1 W.L.R. 433*; *[2011] H.L.R. 16* (p.251) at [19].

157

*Steel (1999) 28 E.H.R.R. 603* .

158

*Howell [1982] Q.B. 416 .*

159

*Laporte [2006] UKHL 55; [2007] 2 A.C. 105; [2007] H.R.L.R. 13 (p.316).*

160

*Hicks [2017] UKSC 9; [2017] A.C. 256 .*

161

*Howell [1982] Q.B. 416 .*

162

*P. Mason, Why it's Kicking Off Everywhere (London: Verso, 2012).*

163

Graeber, "The new anarchists" (January-February 2002) 13 *New Left Review* 61, 66.

164

Graeber, "The new anarchists" (January-February 2002) 13 *New Left Review* 61, 66.

165

This is the power to arrest for a breach of the peace at common law: *Hicks [2017] UKSC 9; [2017] A.C. 256* at [4]; *Laporte [2006] UKHL 55; [2007] 2 A.C. 105; [2007] H.R.L.R. 13* (p.316) at [62].