Lessons from Orgreave: Police Power and the Criminalisation of Protest

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*In October 2016, the Home Secretary ruled out a public inquiry into the ‘Battle of Orgreave’, arguing that “very few lessons” could be learned from a review of practices of three decades ago. It was suggested that policing has undergone a progressive transformation since the 1984-5 miners’ strike, at political, legal and operational levels. This article in contrast charts a significant expansion of state control over public protest since the strike, including a proliferation of public order offences an extension of pre-emptive policing powers. Whilst concerns have been raised about the impact of these developments on protest rights, there is an absence of socio-legal research into the operation of public order powers in practice. In this article I begin to fill this lacuna. Drawing on three empirical case studies of protesters’ experiences of arrest and the criminal justice process, I highlight the relevance of Orgreave for contemporary policing practice.*

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INTRODUCTION

On 18 June 1984, three months into the 1984-5 coal dispute in Britain, striking miners staged a mass picket at the Orgreave coking plant on the outskirts of Sheffield. There they were met by some eight thousand police officers, many of whom had been drafted in from regional Police Support Units under recently established ‘mutual aid’ arrangements.[[1]](#footnote-1) As the pickets began to assemble, police officers charged into the crowd on foot and horseback. Police ‘snatch squads’, deploying shields and truncheons, beat and arrested protesters indiscriminately. Bernard Jackson, a striking South Yorkshire miner, recalls the moment he was arrested:

As I was dragged through the cordon the coppers nearest lashed out with their truncheons. ‘Bastard miner’, ‘Fucking Yorkie miner’. Fists, boots or truncheons, it didn’t matter so long as they could have a go at you. I may have been saved the worst as half way through the cordon I heard one of them say: ‘Just watch it fellas, there’s a camera down there.’[[2]](#footnote-2)

In a critical intervention, the sequence of events in BBC news coverage that evening was transposed, making it appear that mounted police charges were a response to stone-throwing pickets, rather than an act of police aggression.[[3]](#footnote-3) Speaking in the House of Commons the following day, Prime Minister Margaret Thatcher claimed that “what we saw there was not peaceful picketing, but mob violence and intimidation”, and interventions from the Home Secretary encouraged the courts to impose the maximum sentences on those convicted.[[4]](#footnote-4) Ninety-five miners and supporters were subsequently charged with riot and unlawful assembly, but were acquitted after a seven-week trial in light of allegations that police officers had lied in court and fabricated evidence.In 1991, seven years after the Orgreave confrontation, South Yorkshire Police paid £425,000 in an out of court settlement to thirty-nine pickets who had brought civil actions against the force for wrongful arrest, malicious prosecution and assault.[[5]](#footnote-5) No criminal proceedings or disciplinary action was ever brought against any of the officers involved.

In 2012 the Orgreave Truth and Justice Campaign was established with the aim of securing a public inquiry into the policing of the event. The campaign was inspired by the decision to re-open the inquests into the deaths of the ninety-six victims of the Hillsborough football stadium disaster, after an independent inquiry uncovered evidence of systemic corruption by South Yorkshire Police.[[6]](#footnote-6) Despite garnering widespread support, in October 2016 then Conservative Home Secretary Amber Rudd ruled out a public inquiry into Orgreave, arguing that “very few lessons” could be learned from a review of events and practices of three decades ago.In a statement to Parliament, the Home Secretary claimed that:

Over 30 years later, policing is very different and one of my key concerns as Home Secretary is to ensure there is a policing system which works effectively and fairly now. The policing landscape has changed fundamentally since 1984 – at the political, legislative and operational levels. The same is true also for the wider criminal justice system.[[7]](#footnote-7)

The Home Secretary’s conclusions echo official policing and recent academic discourses, in which public order policing is said to have undergone a progressive transformation in recent years, underpinned by a new commitment to dialogue, facilitation and an overarching respect for protesters’ human rights.[[8]](#footnote-8) This apparent ‘shift’ is said to be located in a number of developments in policing since the conclusion of the miners’ strike. Perhaps the most significant has been the introduction of the Human Rights Act 1998 (HRA 1998), which came into force in October 2000. Incorporating the positive rights and freedoms enshrined in the European Convention on Human Rights, including rights to free speech and peaceful assembly, the Act gave rise to what Mead has characterised as “a fully-fledged right to protest” in domestic law.[[9]](#footnote-9) As a ‘public authority’[[10]](#footnote-10), it is now unlawful for the police to act in a way that is incompatible with a person’s Convention rights. A person whose rights have been infringed can also seek direct redress for human rights violations in the domestic courts.[[11]](#footnote-11) The protest policing landscape has also been shaped by a series of legislative reforms ostensibly aimed at restraining police discretion and enhancing police accountability. The Police and Criminal Evidence Act 1984 (PACE 1984), which came into force in January 1986, provided for the first time a comprehensive legislative framework for the operation of police powers and suspects’ rights.[[12]](#footnote-12) The Act drew upon the recommendations of the 1981 Royal Commission on Criminal Procedure, which concluded that a “fundamental balance” must be struck between suspects’ rights and police powers.[[13]](#footnote-13) PACE 1984, together with its associated Codes of Practice, sets out detailed procedures relating to, among other things, stop and search; arrest; detention and questioning of suspects; and the recording of police interviews. Alongside these developments have been a series of policy reforms aimed at making public order policing strategies more “human-rights compliant”.[[14]](#footnote-14) This has included a move towards ‘dialogue’ or ‘negotiated management’ policing, in which a greater emphasis is placed on communication and interpersonal skills over more physically direct aspects of public order policing.[[15]](#footnote-15)

These reforms have enabled the Conservative Government to dismiss a public inquiry into Orgreave as irrelevant to contemporary policing practice. On closer examination, however, it is clear that these reforms have not been the panacea that their proponents have claimed. McConville et al, for example, have suggested that despite Government claims that PACE 1984 reforms would “strengthen the rights of the citizen”[[16]](#footnote-16), the broad powers were deliberately drafted in such a way as to maximise police discretion while limiting the opportunity for legal challenge.[[17]](#footnote-17) Research has further suggested that a growing awareness of human rights obligations among police officers has not necessarily translated into more democratic policing practices. Bullock and Johnson’s research on rank and file officers, for instance, suggests that the HRA 1998 has become “institutionalised” by the police service into a series of bureaucratic processes, which are used by officers to justify and legitimise their existing practices.[[18]](#footnote-18) Claims of a progressive shift in public order policing practice have also been challenged by Gilmore et al.[[19]](#footnote-19) Drawing on an ethnographic study of activists’ experiences of ‘dialogue policing’, the authors suggest that such practices can have a *legitimising* function, enabling the police to define protest groups as irrational and ‘uncooperative’ and thereby justify the use of coercive policing tactics. The ongoing revelations into the long-term infiltration of protest groups by undercover police officers suggest that official claims of a ‘new era’ in protest policing warrant careful scrutiny.[[20]](#footnote-20)

Against the optimism reflected in official protest policing discourses, this article in contrast charts a significant *expansion* of state control over public protest since the conclusion of the miners’ strike, including a proliferation of public order offences and an extension of pre-emptive policing powers. Whilst journalists, politicians and civil society organisations have raised concerns about the impact of these developments on protest and assembly rights[[21]](#footnote-21), there is an absence of socio-legal research on the operation of expanded public order policing powers in practice. In this article, I begin to fill this lacuna. Drawing on unique empirical data on protesters’ experiences of arrest and the criminal justice process, I argue that claims of a progressive transformation in protest policing since the miners’ strike are overstated. The first part of the article considers the various ‘lessons’ that can be learned from the policing of the Orgreave picket. Particular focus is placed on the role of Orgreave in the development of a national policing response to political unrest and an expansion of state control over public protest in the years following the conclusion of the miners’ strike. The second part of the article considers the impact of this expanded regulatory framework on protest and assembly rights, drawing on three ethnographic case studies of the policing anti-war (2008-09), anti-fascist (2010) and anti-fracking (2013-14) protest. The article concludes by considering the relevance of Orgreave, and the policing of the coal dispute more generally, for contemporary policing practice.

LESSONS FROM ORGREAVE

The ‘Battle of Orgreave’ was one of the most decisive events of the 1984-5 miners’ strike. For those who were personally involved or directly affected, these were traumatic events with repercussions that continued to be felt many years after the strike came to an end.[[22]](#footnote-22) The significance of Orgreave extends beyond South Yorkshire. As East et al have noted, the policing of mass pickets at Orgreave was an “extreme manifestation” of what was taking place on picket lines across the country.[[23]](#footnote-23) For the duration of the strike, mining communities found themselves under a virtual ‘state of siege’, as arbitrary arrest and violent intimidation were routinely exercised by officers.[[24]](#footnote-24) A total of 11,312 miners and their supporters were arrested during the twelve-month period of the dispute, with 5,653 charged with offences.[[25]](#footnote-25) Percy-Smith and Hillyard suggest that the mass arrest of thousands of striking miners and their supporters was part of a “deliberate and coordinated strategy” to criminalise striking miners and undermine public support for the dispute. They note that whilst regular statements from senior police officers and government ministers painted scenes of extreme violence and intimidation on the part of pickets, just 8.4 per cent of charges were for violent offences. In contrast one in ten arrestees were injured or roughly handled at the time of their arrest, with many more subject to abuse and other degrading treatment. Striking miners brought before the courts were routinely subject to indiscriminate bail conditions that prevented them from attending further pickets – a practice upheld by the High Court in the *Mansfield Justice* case.[[26]](#footnote-26) The length of time in which miners were subjected to restrictive conditions of bail – over a quarter of whom, like the miners arrested at Orgreave, went on to be acquitted of the charges against them – prevented thousands of striking miners from taking any further effective action in the strike. A sample of 1099 criminal cases analysed by Percy-Smith and Hillyard found that miners spent on average 118 days on conditional bail, with those whose cases were subsequently dismissed held on conditional bail for the longest periods of time.

In finding that a public inquiry into Orgreave is not in the “public interest”[[27]](#footnote-27), the Government disregarded the multiple harms experienced by many of those arrested during the strike. Alongside the miners arrested at Orgreave, thousands more were violently arrested, interrogated and subject to onerous bail conditions which severely restricted their freedom of movement. These conclusions also obscure the extent to which constructions of striking miners as violent criminals paved the way for a significant intensification of state control over public protest and assembly in the years following the coal dispute. One of the first steps taken by the Conservative government in the immediate aftermath of the strike was to introduce a new Public Order Bill, which eventually found its way into law as the Public Order Act 1986 (POA 1986). Officially justified as a direct response to the “criminal offences … committed daily on the picket-line” by striking miners[[28]](#footnote-28), the Act extended the multiplicity of public order powers already in existence and provided police with a much enhanced power of arrest in public order situations.[[29]](#footnote-29) The first and most serious of these offences, Riot, is punishable by up to ten years imprisonment, and covers situations when twelve or more people gathered in a public or private place use or threaten unlawful violence against person or property.[[30]](#footnote-30) In contrast to the common law offence which was limited to the actual use of force[[31]](#footnote-31), Section 1 of the POA 1986 merely requires that there is an actual or inferred ‘common purpose’ in the actions of the accused, such that would cause a ‘reasonable’ (real or hypothetical) person to fear his or her personal safety. Violent Disorder under Section 2 carries a maximum sentence of five years’ imprisonment and mirrors the more serious offence under Section 1 except that the number of people involved can be as low as three and there is no need to establish a ‘common purpose’ in their actions. Affray under Section 3, punishable by up to three years imprisonment, includes actions committed by individuals. None of the offences require that a person actually be put in fear of their safety, nor that any third person was actually present at the scene. The POA 1986 also created a new offence under Section 4 of using “threatening, abusive or insulting words or behaviour” likely to cause another to apprehend actual or provoked “immediate unlawful violence”. Section 5 makes it a summary offence to use “threatening or abusive words or behaviour”, “disorderly behaviour”, or “displays any writing, sign or other visible representation which is threatening or abusive” and which is likely to cause another person “harassment, alarm or distress”.[[32]](#footnote-32)

Since the introduction of the POA 1986, a raft of new offences and discretionary powers have added further to the powers available to the police in public order situations. The Criminal Justice and Public Order Act 1994 (CJPOA 1994), for instance, created a new offence under Section 4A of the POA 1986.[[33]](#footnote-33) Mirroring the offence under Section 5 of the POA 1986 which was limited to a £1,000 fine, the new offence carries a maximum sentence of six months’ imprisonment and a £5,000 fine where intent to cause “harassment, alarm or distress” can be established. Further offences were created under the CJPOA 1994, including a new offence of “aggravated trespass” which criminalises trespass on land where there is an intention to intimidate, obstruct or disrupt persons engaging in a “lawful activity”.[[34]](#footnote-34) Although aimed specifically at animal rights protesters[[35]](#footnote-35), the aggravated trespass powers have since been used in response to a wide range of ‘direct action’ protests, including environmentalist[[36]](#footnote-36), anti-war[[37]](#footnote-37), and anti-austerity[[38]](#footnote-38) protests.Added to this has been a shift towards what Mead[[39]](#footnote-39) has described as the “privatised regulation” of protest – including the use of quasi criminal-civil harassment injunctions[[40]](#footnote-40) and the enforcement of private law rights and remedies by commercial targets.

A similar pattern has emerged in the expansion of bail powers. At the time of the miners’ strike, conditional bail could only be imposed by a criminal court, against individuals charged with a criminal offence. The CJPOA 1994 gave the police the power to attach most of the conditions to a suspect’s bail that a court can attach after charge.[[41]](#footnote-41) The power was extended by the Police and Justice Act 2006 to allow the police to impose pre-charge bail conditions on suspects pending further investigations.[[42]](#footnote-42) Further amendments under the Criminal Justice Act 2003 and the Police and Justice Act 2006 enable the police to grant ‘street bail’ at a location other than a police station.[[43]](#footnote-43) These reforms mean that it is now possible for the police to impose conditions of bail on an arrested person, which can include onerous restrictions on their freedoms of movement and assembly, in the absence of sufficient evidence to charge them with a criminal offence.[[44]](#footnote-44) Conditions imposed can include residence. requirements, curfews, exclusions from particular locations, restrictions on contact with certain people and weekly reporting at a local police station.Although breach of bail is not a criminal offence[[45]](#footnote-45), the police have the power to arrest an individual where there are reasonable grounds to suspect that they have or will breach a condition of bail.[[46]](#footnote-46) The Policing and Crime Act 2017 introduced a twenty-eight-day limit on the time in which an individual can be held on pre-charge bail. This can be extended by up to three months on the authorisation of a senior police officer, with further extensions possible on application to the magistrates’ court.[[47]](#footnote-47)

A cumulative impact of these developments is that public order policing powers are now far more extensive than during the 1984-5 miners’ strike. Despite some examples of legislative retrenchment – such as the removal of the word ‘insulting’ under Section 5 of the Public Order Act 1986[[48]](#footnote-48) – the general trend has been one of hyper-criminalisation and legislative creep. Public protest is subject to what Wells and Quick have characterised as a “legislative kaleidoscope”[[49]](#footnote-49), with existing offences and preventative powers supplemented by new and overlapping statutory provisions.[[50]](#footnote-50) Proponents of these developments have argued that the expanded legal regime has not necessarily translated into an erosion of civil liberties. In his 1994 research into the policing of protest in London, for example, P. A. J. Waddington found that the police routinely under-enforce the law, noting that the broad statutory public order powers under the POA 1986 are rarely invoked.[[51]](#footnote-51) Waddington suggested that whilst there is “often ample legal justification for arresting protesters”, senior officers “actively restrain” their subordinates from making arrests in order to avoid both “on the job trouble” in the form of disorder and confrontation, and “in the job trouble” in the form of allegations of heavy-handedness and provocation. As Waddington acknowledges, however, during the period of his study large numbers of arrests were made by the MPS, including the controversial arrest of 339 protesters during demonstrations against the Poll Tax in March 1990. In the absence of an analysis of these cases and their outcomes, it is not sufficient to conclude, as Waddington does, that public order arrest powers are “not exploited’’.[[52]](#footnote-52) As the experiences of the miners’ strike reminds us, arrest often serves a number of “unofficial purposes”[[53]](#footnote-53) which go beyond a desire to secure convictions against those who have committed criminal offences. Public order offences have also expanded significantly in the years since Waddington conducted his fieldwork, as the above analysis illustrates. Thus whilst Waddington is correct to stress the difference between “law in books” and “law in action”[[54]](#footnote-54), the reality is that very little is known about the operation of public order policing powers in practice. Neither police forces nor the Crown Prosecution Service (CPS) are under an obligation to publish data on protest-related arrests, charges and case outcomes, and there is a paucity of academic research on the issue. Despite the importance of arrest and the criminal justice process for protesters’ own fate and that of their movements, these experiences remain a “black box” in the study of protest policing.[[55]](#footnote-55)

METHODS

The data presented below is derived from three ethnographic case studies of protests that took place in London, Bolton and Salford between 2008 and 2014. Data was gathered using multiple methods, including participant observation at protest events and defence campaign meetings, observations at court hearings, and interviews with protesters and legal representatives. This was supplemented by an analysis of police press releases, media reports, legal case files and quantitative and qualitative data obtained by the author from police forces and the CPS under the FOIA 2000. A longitudinal approach was adopted, enabling the author to examine how the protests developed from the planning stages through to the conclusion of the legal proceedings.

The selection of cases was guided by two principal considerations: (i) *Availability of data*. Presently, the only means to obtain data on protest-related arrests, charges and case outcomes is to track individual cases as they progress through the criminal justice system. This is complicated by several factors; for example, protesters may be arrested several weeks after the protest concluded, charged and processed individually, and represented by several different law firms. The author’s unique access to protest groups, defence campaigns and legal actors presented a rare opportunity to consider forms of protest regulation rarely considered in the academic literature to date; (ii) *Police response*. There is a tendency in contemporary accounts of public order policing to focus on the development of ‘consensual’ forms of protest regulation. This is often at the expense of an analysis more coercive methods of securing compliance.[[56]](#footnote-56) All three case studies were characterised by the use of force and a strategy of mass arrest. In observing the cases from the protests through to the conclusion of the legal proceedings, it was possible to move beyond police-protester interactions and consider the role of law and legal institutions in the policing of dissent.

A number of caveats in the choice of method should be noted. First, although case studies can be a useful way of uncovering hitherto unacknowledged experiences of policed communities,[[57]](#footnote-57) caution should be taken in generalising the findings beyond the cases identified. For example, there may be differences in approach between police forces[[58]](#footnote-58), and at different periods in time. Second, although every effort has been taken to ensure that the data presented is reliable, including by cross-referencing data from a range of sources, tracking multiple cases as they progress through the criminal justice system is an inherently difficult task. Where discrepancies have been observed between sources, this is accounted for in the text.

Each case study begins with a brief description of the protest event, drawing upon observations and interviews with protest participants and legal representatives. This is followed by an outline of the principal data on arrests, bail and case outcomes relating to each case study. The following section draws out some of the key themes arising from the data and considers the broader implications of the case studies for the regulation of protest and dissent.

CASE STUDY 1: ISRAELI EMBASSY PROTESTS 2008-09

1. *Background and context*

On 27th December 2008, Israeli forces launched ‘Operation Cast Lead’, a three-week military incursion into the Gaza Strip which triggered a wave of demonstrations, vigils and occupations throughout the United Kingdom. The focal point of the protests was the Israeli Embassy in London, which was scene to some of the largest demonstrations in Britain since the mass protests against the Iraq War in 2003.[[59]](#footnote-59) On 10 January 2009, an estimated 150,000 people took part in a march from Hyde Park to the Israeli Embassy, organised by a coalition of anti-war groups. As the march reached the closing rally, several lines of riot police carrying long shields and truncheons, together with mounted police and dog units, charged into the crowd. Rabia, who attended the protest, described the scene:

There was a sudden panic, a big swell, all the crash barriers got knocked over, people fell to the floor. People began to panic, especially people with children … The police did a charge and then pulled back, and then did another charge and pulled back, just intimidating people. People were just standing around, totally disorientated and worried for their safety. (Rabia, Embassy Protester).

In response, some protesters threw placards and bottles towards the gates of the Embassy and the windows of a local café were broken. As the closing rally came to an end, around 2,000 protesters were ‘kettled’ inside police cordons for up to four hours. They were eventually released on the condition that they provide their name, address, date of birth and have their photograph taken.

On 22 January 2009, the Metropolitan Police Service (MPS) issued a press release appealing for information to help trace individuals suspected of involvement in “violence and aggression” during the Gaza demonstrations.[[60]](#footnote-60) According to Commander Bob Broadhurst, then head of the MPS public order unit, those wanted by police consisted of a “small hardcore” who acted as “antagonists” during the demonstrations, “attacking police and smashing shop windows” and “stirring up others within the crowd”. He further claimed that his officers had “worked hard to facilitate the march to keep participants safe” while the embassy and police officers came under “sustained attack” from an unruly crowd:

The Met will not tolerate attacks on officers under the guise of protest. Our right to protest is an important one and should never be undermined by thugs and louts who simply want to cause trouble.[[61]](#footnote-61)

Included in the press release were CCTV images of individuals who were “wanted” in connection with the police investigation. The images were given wide-scale publicity when they were printed on the front pages of several local and national newspapers.[[62]](#footnote-62)

2. *Arrests, charges and convictions*

In the weeks following the protests, a series of ‘dawn raids’ at locations across the United Kingdom led to the arrest of 169 people in connection with the Embassy protests. Property including mobile phones and laptops were seized by police and the family members of those arrested were questioned by officers. Seventy-one of those arrested went on to be charged with offences - sixty-four with at least one count of violent disorder (*Table 1*). It has been possible to track the outcome of sixty-nine of the seventy-one prosecuted cases (*Table 2*). Of these, fifty-four protesters were convicted of offences and twenty-nine given custodial sentences of between two months and two and a half years.[[63]](#footnote-63) The convictions included a twenty-one year-old student who was given a twelve month jail term for throwing a single bottle towards the gates of the Israeli Embassy, and a seventeen year-old student sentenced to thirty months in a Young Offenders Institution for throwing “missiles” (consisting of wooden placards and plastic bottles) towards police lines. None of those convicted were alleged to have caused any direct injury to a police officer or member of the public. Almost all had entered guilty pleas at the earliest available opportunity.

As detailed on *Table 2*, the overwhelming majority of convictions (96 per cent) relied upon guilty pleas. Of the seventeen cases where protesters entered not guilty pleas, fifteen resulted in acquittal. Eight were acquitted after trial and a further seven cases were dismissed by the court after the CPS offered no evidence. Many of these cases collapsed following persistent requests from lawyers for the disclosure of police material.[[64]](#footnote-64) In March 2010 a twenty-three year-old protester charged with two counts of violent disorder was acquitted after his lawyer discovered undisclosed police footage that had captured his assault by officers. [[65]](#footnote-65) The case raised questions about the validity of the police’s account of protesters as the instigators of violence and the reliability of the testimony of individual officers. Between March and July 2010, fourteen of the twenty-nine cases where custodial sentences had been imposed successfully appealed their sentences in the Court of Appeal.[[66]](#footnote-66) In the months that followed, the MPS agreed to pay damages to several protesters injured and wrongfully arrested during the Gaza demonstrations. In July 2010, two protesters received out of court settlements of £12,500 for head injuries sustained after being struck by police batons during a protest on 3 January 2009.[[67]](#footnote-67) In May 2011 a 79-year old man received an out of court settlement after pursuing a civil action for assault against the CPM for injuries sustained when he was struck on the head by a police shield outside of the Israeli Embassy. In December 2011 the High Court awarded £14,300 in an action against the CPM to a female protester who suffered a serious fracture to her arm.[[68]](#footnote-68) The judge found that the officer involved had used force that was “neither reasonable nor proportionate”, thereby causing injuries that were “entirely avoidable”.[[69]](#footnote-69) According to data obtained by the author under the FOIA 2000, no police officers faced criminal proceedings or disciplinary action following allegations of police misconduct during the Embassy protests.[[70]](#footnote-70)

*Table 1: Offences charged by principal offence*[[71]](#footnote-71)

|  |  |
| --- | --- |
| **Principal Offence** | **Number** |
| Violent disorder (Section 2 POA 1986) | 64 |
| Fear or provocation of violence (Section 4 POA 1986) | 2 |
| Actual bodily harm (Section 47 Offences Against the Person Act 1981) | 1 |
| Common assault | 1 |
| Criminal damage (Section 1 Criminal Damage Act 1971) | 1 |
| Racially or religiously aggravated harassment (Section 5 POA 1986 and Section 31 Crime and Disorder Act 1998) | 1 |
| Wilful obstruction of persons assisting police (Section 89 Police Act 1996) | 1 |
| **TOTAL** | **71** |

*Table 2: Case outcomes*[[72]](#footnote-72)

|  |  |
| --- | --- |
| **Outcome** | **Number** |
| **Arrested** | **169** |
| **Charged** | **71** |
| **Convicted** | **54** |
| Guilty plea | 52 |
| Not guilty plea | 2 |
| **Unaccounted for** | **2** |

CASE STUDY 2: BOLTON ANTI-FASCIST PROTEST 2010

1. *Background and context*

On 20 March 2010, a protest organised by ‘Unite Against Fascism’ (UAF) and other anti-racist groups was held in Bolton town centre, in response to a planned march by the far-right English Defence League.[[73]](#footnote-73) In the weeks leading up to the demonstration, Greater Manchester Police issued a number of press releases predicting violence at the demonstration and warning “troublemakers” to expect a “robust response”.[[74]](#footnote-74) On the morning of the protest, police checkpoints were established on the outskirts of the town centre and anyone attempting to cross through police lines was stopped, searched and questioned by officers. As the protest grew in size, the police deployed mounted officers and dog units into the crowd and protesters were ‘kettled’ inside police cordons. Several protesters were injured, with at least three requiring hospital treatment. One protester recalled the scene:

… riot police came wading in and started using batons, one man was hit, bleeding from the head and veering on unconsciousness, I helped him up and tried to get him to medical treatment but the police would not let him through their line. I saw another man bleeding from the mouth. I also witnessed the police punching demonstrators, a friend I travelled with to the protest was punched in the head. I was grabbed around the throat by an officer … One of the dog handlers wrenched his dog onto its hind legs and charged into the crowd screaming with the dog in front of him (statement from Jamie, Bolton protester).

Within hours of the protest coming to an end, Assistant Chief Constable Gary Shewan of GMP issued the following statement:

Today in Bolton we have seen groups of people, predominantly associated with the UAF, engaging in violent confrontation. It is clear to me that a large number have attended today with the sole intention of committing disorder and their actions have been wholly unacceptable. Turning their anger onto police officers they acted with, at times, extreme violence and their actions led to injuries to police officers, protestors and members of the public.[[75]](#footnote-75)

2. *Arrests, charges and convictions*

According to figures released by GMP, fifty-five anti-fascist protesters were arrested during the protest.[[76]](#footnote-76) The arrests included two of the protest organisers on suspicion of ‘conspiring to incite others to commit violent disorder’, contrary to Section 2 POA 1986. The majority of those arrested were released on pre-charge bail with the condition that they return to the police station on a specified date. The two protest organisers were given the additional condition that they did not attend any UAF “meeting or gathering” throughout the whole of the United Kingdom. Whilst in custody, the home address of one of the protest organisers was searched by police.

Of the fifty-five protesters arrested, four were charged with offences and two were convicted after trial (*Tables 3 and 4*). The first was convicted of an offence under Section 4 POA 1986 and ordered to pay a £100 fine. The second was convicted of assaulting a police officer and sentenced to 250 hours of unpaid work and a £650 fine. A third protester was acquitted after trial of an offence under Section 5 POA 1986. Charges under Section 4 POA 1986 against the fourth protester were discontinued by the CPS after footage was obtained by his defence solicitor which showed him being struck on the head by his arresting officer.[[77]](#footnote-77) The cases against the two protest organisers resulted in no further action. In the years following the protests, GMP has paid several thousands of pounds in damages to protesters following claims against the police for assault, false imprisonment and malicious prosecution. One protester received £15,000 from GMP in August 2013 in an out of court settlement for false imprisonment and the “homophobic abuse” that he experienced from one of his arresting officers.[[78]](#footnote-78) Two further civil actions against the police - a protester who brought an action for assault after he was seriously injured by a police dog and another arrested protester who brought an action for false imprisonment and assault - each received £12,000 in damages. In August 2012, two police officers were charged with attempting to pervert the course of justice following allegations that they had produced witness statements in which they had falsely accused sixty-three-year-old protester of assaulting his arresting officer. The case against one officer was quashed after the trial judge ruled that the evidence did not support the charge. Charges against the second were dropped by the CPS before trial.[[79]](#footnote-79)  Internal police misconduct proceedings against the officers resulted in no further action.

*Table 3: Offences charged by principal offence[[80]](#footnote-80)*

|  |  |
| --- | --- |
| **Principal Offence** | **Number** |
| Assault on a police constable | 1 |
| Fear or provocation of violence (Section 4 POA 1986) | 2 |
| Harassment, alarm or distress (Section 5 POA 1986) | 1 |
| **TOTAL** | **4** |

*Table 4: Case outcomes*

|  |  |
| --- | --- |
| **Outcome** | **Number** |
| **Arrested** | **55** |
| **Charged** | **4** |
| **Convicted** | **2** |

CASE STUDY 3: BARTON MOSS ANTI-FRACKING PROTEST 2013-14[[81]](#footnote-81)

*1. Background and context*

In June 2010, Salford City Council approved a planning application by the energy company IGas to conduct exploratory ‘fracking’[[82]](#footnote-82) on Green Belt land at Barton Moss, Salford. The decision triggered opposition from environmental campaigners and local residents, and between November 2013 and April 2014 a protest camp was established at the drilling site. Those involved adopted several protest techniques, including the use of ‘lock-ons’ and blockades[[83]](#footnote-83), but relied most heavily on ‘slow walking’ in front of IGas convoys in order to disrupt the activities of the energy company. These slow walk protests took place twice daily, as the IGas lorries arrived and left the site, for four days per week, for the duration of the drilling operation.

The policing operation at Barton Moss, conducted by GMP, was codenamed Operation Geraldton. It was a major policing operation that lasted for over six months and cost in excess of £1.7 million.[[84]](#footnote-84) By the conclusion of the protest, GMP had received 77 official complaints about the conduct of officers at the site – 40 per cent of which related to the misuse of force.[[85]](#footnote-85) The following quotation captures some of these concerns:

The knuckles in the back, stepping on people’s feet, stepping on people’s heels; it’s quite deliberate. I’ve told them many times that it’s a peaceful protest and there is no need for it, but they just carry on doing it – telling me to march faster. I’m clearly moving, I’m clearly within my normal right to keep moving, and they just keep assaulting me and assaulting other people (James, Barton Moss protester).

In response to complaints about the scale and intensity of the policing operation, a series of GMP press releases justified the response as “proportionate” to the “emerging threat” posed by the camp.[[86]](#footnote-86) In a statement published on 23 January 2014, Chief Superintendent Mark Roberts, the officer with overall responsibility for the policing operation, claimed that:

[t]he majority of people who are arriving at the site are not there to protest against fracking but are there to disrupt and intimidate the local community and to antagonise police. We have seen offences of assaults, damage, harassment of residents and workers, a flare fired at the police helicopter and threats to kill.[[87]](#footnote-87)

2. *Arrests, charges and convictions*

By the conclusion of the protests in April 2014, there had been 231 arrests relating to 120 protesters for eighteen different offences (*Table 5*).[[88]](#footnote-88) Data obtained by the author from GMP under the FOIA 2000 indicates that the overwhelming majority of arrests (98 per cent) were for non-violent offences. The largest category of arrests was for wilful obstruction of the public highway[[89]](#footnote-89) (77 arrests, 33 per cent of total arrests). This was followed by aggravated trespass[[90]](#footnote-90) (68 arrests, 30 per cent of total arrests) and breach of conditions of bail[[91]](#footnote-91) (31 arrests, 13 per cent of overall arrests). Arrestees were presented with a uniform list of pre-charge bail conditions that prohibited their return to the protest site. Anyone returning to the camp following release from custody would risk further arrest. When challenged in the Magistrates’ Court, bail conditions were repeatedly found to be disproportionate and protesters were granted unconditional bail. Despite concerns about their legality, restrictive bail conditions continued to be imposed by GMP.

Of the 231 arrests, 226 led to charges relating to 115 individuals.[[92]](#footnote-92) Some of the first cases to reach court were for wilful obstruction of the public highway. These cases collapsed following a Magistrates’ Court ruling that the land in question was a private road, rather than a public highway.[[93]](#footnote-93) Concurrent charges of obstructing a police officer in the course of a lawful duty were later dismissed on the basis that the arrests and the force used to ‘push’ protesters down the road, were unlawful. Charges for the most serious arrests - threats to kill - were dismissed by the magistrates’ court after the District Judge found ‘wide inconsistencies’ in the testimony of prosecution witnesses.[[94]](#footnote-94) In total, Operation Geraldton led to thirty-five convictions.This included three protesters convicted of wilful obstruction of a police officer as a result of their involvement in a ‘picnic lock- on’ during a visit to the camp by former Green Party leader, Natalie Bennett. The protesters each received an absolute discharge. Another protester associated with the Barton Moss protest was convicted of criminal damage after he attached himself with superglue to the windows of a Council building. Following a guilty plea, the protester was ordered to pay a £10 fine, reduced from £150 after the defence successfully argued that police officers had caused the majority of the damage.[[95]](#footnote-95)

*Table 5: Arrests by principal offence*[[96]](#footnote-96)

|  |  |
| --- | --- |
| **Principal Offence** | **Number** |
| Obstruction of the highway | 77 |
| Aggravated trespass | 68 |
| Breach of bail | 31 |
| Obstructing a police officer | 11 |
| Criminal damage | 9 |
| Section 4 | 8 |
| Section 5 | 7 |
| Breach of the peace | 6 |
| Threats to kill | 2 |
| Burglary | 2 |
| Assault PC | 2 |
| Common assault | 1 |
| Drunk and disorderly | 1 |
| Criminal trespass | 1 |
| Failure to provide a specimen | 1 |
| Section 127 Communications Act 2003 | 1 |
| Threats to cause damage | 1 |
| Possession of articles likely to cause criminal damage | 1 |
| **TOTAL** | **230** |

*Table 6: Case outcomes*

|  |  |
| --- | --- |
| **Outcome** | **Number** |
| **Arrested** | **120** |
| **Charged** | **115** |
| **Convicted** | **35** |

DISCUSSION

These case studies offer a rare insight into the operation of public order policing powers in practice. Despite claims of a progressive transformation in public order policing since the 1980s, there are clear continuities between these cases and the experiences of striking miners. Some of these themes are explored further below.

1. *Police violence*

First, in all three case studies, mass arrest took place in the context of a policing operation characterised by police violence and aggression towards protesters. In each of these examples, it was the victims of police violence, rather than the officers responsible, who were arrested for offences. Just as constructions of striking miners as a violent ‘mob’ were invoked to legitimise the mass arrest of thousands of striking miners during the coal dispute, in the more recent cases police portrayals of protesters as “thugs”, “louts”, “hardcore anarchists” and “violent agitators” justified an escalation of arrests and police use of force. There are also remarkable continuities in the tactics used to make arrests, as the following quotations illustrate:

They pulled me over, beat me on the floor … there were about six or eight of them on me. They carried me across, hitting me in the privates from behind and in the face (arrested Abertillery miner).[[97]](#footnote-97)

I was jumped on, kicked, punched, thrown on the floor and handcuffed. I was in complete shock … [The police officer] was pulling the handcuffs to make me feel pain and when I complained about the pain he said, ‘I’ll teach you about pain, I’ll teach you a lesson you prick, I know your kind’ (arrested Embassy protester).

I was struck a glancing blow on the right side of my head, which dislodged my glasses ... In the commotion I got turned around as people were trying to protect themselves and others from the blows about the heads ... I was grabbed from behind and pulled by two officers - at which point my glasses fell to the floor, followed by me landing on my back. I was ordered to get up and was then cuffed (arrested Bolton protester).

He jumps on me from behind, immediately followed by, I guess, two or three other officers … one officer had each of my arms, and I was quite forcibly thrown into the fence face-first. And just quickly as I hit the fence, I had to turn my head to avoid injury. It was a real force; it was just totally over the top (arrested Barton Moss protester).

Whilst the scale and intensity of this response was justified by the presumed ‘violence’ of those taking part, in each of these examples an analysis of arrest, charge and conviction data reveals these characterisations to be wholly unreliable. In the Barton Moss case study, where police claimed that the “majority” of protesters were there simply to “disrupt and intimidate the local community and to antagonise police”, rather than to protest against fracking, ninety-eight per cent of arrests were for non-violent offences, and the small number of convictions arising from the protests do not appear to legitimise the type of policing response that protesters experienced. GMP’s claims of “extreme violence” from protesters during the Bolton demonstration are similarly unsubstantiated. The fifty-five arrests led to just two convictions for minor public order offences resulting in non-custodial sentences. Convictions following the Embassy protests for the more serious offence of violent disorder might at first appear to lend some support to police characterisations of this protest as violent, however as noted above the offence does not require that actual ‘violence’ was committed by protesters, merely that a hypothetical person of ‘reasonable firmness’ might fear for his or her personal safety as a result of the defendant’s use or threatened use of ‘violence’ - a term undefined in the Act.[[98]](#footnote-98) The convictions described above - throwing bottles and placards towards the gates of the Embassy - are arguably far removed from official portrayals of this demonstration. Moreover, like its predecessor offence, unlawful assembly, violent disorder convictions often rely heavily upon the testimony of police officers; the high acquittal rate in contested cases highlights the frailty of this evidence when placed under scrutiny.

2. *Surveillance*

Second, it is clear from these examples that mass arrest continues to serve a function beyond securing convictions against those who have committed criminal offences. Arrest triggers a range of further powers, including search, seizure and detention, which would otherwise be unavailable to police in the absence of an arrest. During the miners’ strike, arrested miners were routinely questioned about their political beliefs and asked to name those responsible for picket deployment.[[99]](#footnote-99) Recalling a police interview following his client’s arrest for two counts of violent disorder during the Embassy protests, one defence solicitor noted a very similar style of questioning:

it was very aggressive and going on the offensive, questions about had he been on other protests and things like this, you could tell that there was almost a different agenda in the background to just dealing with a protester, it was trying to deal with future protests as well (Embassy protest defence solicitor).

The police checkpoints and search of the protest organiser’s home following the Bolton demonstration and the dawn raids and seizure of property following the Embassy protests follow a similar pattern.[[100]](#footnote-100) The police have at times been remarkably cavalier about their abuse of arrest powers for intelligence gathering purposes. Following the controversial arrest of 138 UK Uncut activists outside the Fortnum and Mason luxury goods store in March 2011, Lynn Owers, Assistant Commissioner to the Metropolitan Police, told the House of Commons Home Affairs Committee:

… the fact that we arrested as many people as we did is so important to us because that obviously gives us some really important intelligence opportunities … We do need to improve the intelligence picture, but our ability to arrest over 200 people at the weekend gives us a very good starting point in terms of building that picture.[[101]](#footnote-101)

It is also clear that the intelligence-gathering opportunities of arrest extend beyond those arrested. In the context of frequent, arbitrary and often violent arrests, the threat of arrest can be enough to coerce protesters to submit to a range of intrusive practices that the police would otherwise lack the legal authority to compel. During the miners’ strike, these tactics enabled the police to obtain of vast body of intelligence on those involved in the dispute. A striking South Wales miner interviewed by East et al recalled the following interaction:

At Daw Mill Colliery an inspector came over to our van and wanted to search it and the pickets. ‘I have reason to believe you are monitoring police calls’. He said that if we didn't let him search the van then ‘He would have us for criminal damage’. When we asked him damage to what he said ‘It doesn't matter. You'll have your day in court’. We let him search the van and then us.[[102]](#footnote-102)

Similar tactics were utilised during the Embassy protests, when police officers threatened protesters attempting to leave police cordons with arrest if they failed to provide personal information and ‘consent’ to intrusive police searches:

You were stopped, you had your photograph taken, they said they wanted your name, address and date of birth. You were photographed and you had to say to a camera what your details were. And then you got marched away by the same two policemen and then got patted down and had your bags looked through (Rozia, Embassy protester).[[103]](#footnote-103)

The use of arrest for ‘unofficial purposes’ continues to be buoyed by the courts’ extreme deference to police decision making in public order situations. In the Barton Moss case study, for example, the police continued to make arrests for wilful obstructing the public highway after it had been established that the land in question was a private road. When protesters decided to challenge the legality of these practices in a test case in the High Court, the court found that:

[t]he fact that the officer in fact had an offence of which the appellant was not guilty in mind did not prevent her from taking steps which in the circumstances, as she believed them to be, reasonably appeared to her to be necessary for preventing crime.[[104]](#footnote-104)

In other words, a protester must comply with an officer’s demands (or face arrest for obstruction) even if, as in this case, they are not committing the offence that was in the mind of the officer or, indeed, not doing anything unlawful. The uncertainty surrounding the police response can have a destabilising impact on protesters and their movements.

3. *Summary punishment*

In each of the case studies, arrest was the trigger for the imposition of bail conditions which placed onerous restrictions on the movements of protesters. In the Bolton and Barton Moss examples, pre-charge bail operated as protest banning orders, prohibiting arrested protesters from taking part in future protests. These experiences appear to reflect a broader pattern. Although there is currently no obligation on forces to publish pre-charge bail statistics, figures obtained by the *Guardian* newspaper suggest that between 2008 and 2014 at least eight hundred and fifty-five people were given pre-charge bail conditions which prohibited them from attending protests. Of those, just one hundred and twenty-three (14 per cent) went on to be charged with an offence.[[105]](#footnote-105) The case studies highlight the limits of existing safeguards to ensure that pre-charge bail powers are not open to abuse. For instance, whilst an application to the magistrates’ court can be made to vary pre-charge bail conditions, in the Barton Moss example, the police continued to impose restrictive conditions of bail despite the magistrates’ court repeatedly finding the conditions to be disproportionate and granting unconditional bail. In some cases attempts to challenge pre-charge bail conditions were actively frustrated by police, as one arrested Barton Moss protester recalls:

when they give you your bail conditions you’re supposed to be able to say, “No,” and then stay in overnight and go to court, but they were refusing people to do that … First arrest I kept saying, “Can I talk to the solicitors?” and they kept saying, “Yes, we’ll ring later,” and they tried to bail me out the station before I talked to them and I refused. I said, “No, I want to talk a solicitor before I leave,” and they were just, like, “Oh, well, if they don’t answer now then you’ll have to go.”’ (Vicky, Barton Moss protester).

In those cases where bail conditions were varied or quashed by the magistrates’ court, arrested protesters had to endure further long delays before they were informed that ‘no further action’ was to be taken in their case. The possibility of facing criminal charges during this time caused significant distress to arrested protesters and deterred some from attending further protests.[[106]](#footnote-106)

Conviction rates across all three case studies were remarkably low (*Figure 1*). Nearly a quarter (24 per cent) of the Embassy protesters, 85 per cent of the Bolton protesters and 70 per cent of the Barton Moss protesters who were charged with offences went on to be acquitted (*Figure 1*). Taking into account those who had no further action against them following arrest, 68 per cent of the Embassy protesters, 96 percent of the Bolton protesters and 71 percent of the Barton Moss protesters who were arrested for offences went on to have their cases dropped, dismissed or were found not guilty by the courts. These proportions are considerably higher than occur during the course of ‘ordinary’ criminal proceedings.[[107]](#footnote-107) It is also notable that in the case study with the highest conviction rate – the Embassy protests – the vast majority of convictions (fifty-two out of fifty-four) relied upon guilty pleas. In this example, most of the arrests took place not at the demonstrations but several weeks later in a series of ‘dawn raids’. Many of those arrested were interviewed without a solicitor present, having being warned by police that a request for legal advice would significantly increase their time held in custody.[[108]](#footnote-108) This initial segregation of protesters appeared to contribute to the reluctance of many of those arrested to take their cases to trial. One defence solicitor suggested that this was a deliberate strategy on the part of the police:

People were raided individually, it was very isolating, and it was kept quiet … Normally the police are very proud of the number of arrests they make and are shouting out about it, but they were very clever here, it was a very planned operation of individual arrests … This leads to confessions through fear and isolation in the courts. (Embassy protest defence solicitor).

In those cases where protesters were supported by their lawyers to challenge the evidence against them, the vast majority - fifteen out of the seventeen cases where not guilty pleas were maintained - ended in acquittal. In many of these cases, the evidence used to acquit protesters came to light as a direct result of the collective efforts of defence campaigns, legal observers and specialist lawyers - factors which also played a decisive role in the acquittal of thousands of arrested miners’ during the coal dispute.

For the pickets arrested at Orgreave, it was not until July 1985, thirteen months after the Orgreave confrontation, that they were finally exonerated of the serious charges against them. Those affected had to wait a further six years before payments of compensation offered some acknowledgement of the harms they had experienced. A similar pattern emerges in the more recent cases. The Embassy cases took on average 437 days to conclude from arrest through to acquittal or conviction. Following the Bolton and Barton Moss arrests, protesters had to wait up to two years to reach a conclusion in their case. For the small number of protesters who attempted to hold the police to account via official complaints and civil actions against the police, cases took far longer to conclude. During this time, protesters often experienced unemployment, financial hardship and emotional trauma as a direct result of the legal proceedings. The harms extended beyond those arrested. Speaking following the arrest of his son on suspicion of violent disorder during the Embassy protests, Jabir described the devastating impact the case had on his entire family:

The atmosphere changed in the house completely. My wife was crying all the time, depressed all the time … There were a lot of arguments in the family because of the stress. You can see that there is a sense of unhappiness in the family. (Jabir, father of arrested Embassy protester).

*Figure 1: Case study arrests, charges and convictions*

CONCLUSION

The police are upholding the law. They are not upholding the Government. This is not a dispute between miners and government. This is a dispute between miners and miners ... It is the police who are in charge of upholding the law ... (they) have been wonderful.[[109]](#footnote-109)

These comments by former British Prime Minister Margaret Thatcher were made during an interview on the BBC Panorama programme on 9 April 1984. Clearly at odds with what is now known about the degree of government interference in the policing of the dispute[[110]](#footnote-110), they reflect, in Brogden’s terms, an “ideological view” of policing which obscures the material practices of the police in British society.[[111]](#footnote-111) The policing of the Orgreave picket shattered the myth that Britain has a uniquely benevolent police force. Through the use of road blocks, mass arrest and blanket bail conditions – tactics given legal legitimacy by the courts - the police attempted to control the movements of striking miners and facilitated their construction as a violent ‘enemy within’. As the above analysis illustrates, there are clear continuities in the policing methods experienced by the Orgreave pickets and the case studies analysed in this article. The use of militarised tactics including baton charges, riot shields, snatch squads and ‘kettling’ can all be traced back to policing strategies developed during the strike.[[112]](#footnote-112)

Equally significant is the process of *criminalisation* in legitimising this violent response. As ‘gatekeepers’ of the criminal justice system, police officers are granted substantial latitude to decide how, and in what circumstances, particular conduct amounts to an offence.[[113]](#footnote-113) Police forces are rarely held to account for low conviction rates following protest-related arrests, with cases often dropped several months and in some cases years after a protest has concluded. Describing the criminal justice response to the urban riots in Los Angeles in the 1960s, Balbus noted a similar pattern.[[114]](#footnote-114) He suggested that although the police response to the riots was brutal, there was no total abandonment of legality: for example, arrestees were prosecuted rather than detained without charge, and standard charges were employed against those arrested. Even though many of the charges subsequently led to acquittals, processing ‘rioters’ through the criminal justice system provided a veneer of legitimacy for practices that would otherwise have been overtly repressive. Balbus described this process as “repression by formal rationality”, locating it in the state’s corresponding need for both order and legitimacy. Once the process of criminalisation is under way, he suggested, public debate is less likely to centre over the substantive grievances of the protest participants, but rather the severity of punishment that they deserve. Criminalisation can thus provide a useful justification for political containment, mobilising considerable popular approval behind the state*.*[[115]](#footnote-115) These experiences remind us that whilst it is common to counter-pose law with abuses of power and acts of violence, law and its institutions are often complicit in legitimising such violence.[[116]](#footnote-116) A police officer inadvertently filmed speaking to protesters at the Bolton demonstration put it in the following terms:

there isn’t really a limit to how far we can go to keep order.  It doesn’t matter if it’s right or wrong.  I can do what I want as long as I can justify it. If I want to punch you in the face I can, as long as I can justify it afterwards. That’s the law.[[117]](#footnote-117)

There is, however, an inherent contradiction – or dialectic – existing in the state’s need to reconcile the competing interests of order and legitimacy. The criminal trial, for example, can become a site of resistance for protest groups, with court solidarity and increased media exposure galvanising broader public support for the movement. Crucially, it can also present a rare opportunity to expose the actions of the police to public scrutiny. It is notable that the Orgreave pickets were acquitted after the evidence of police officers, including those in command, were discredited under cross-examination. The disclosure of a controversial police public order manual during the course of the criminal proceedings undermined official accounts of the policing of the dispute.[[118]](#footnote-118) A similar pattern emerged in the more recent cases, where persistent requests for disclosure of police materials exposed evidence of police misconduct and triggered a high acquittal rate in contested cases. The process of criminalisation - which can be an effective means of legitimising the police response – also has the potential to undermine that legitimacy.

Whilst the role of arrest and the criminal justice process has rarely been considered in studies on protest policing, the data presented here suggests that these experiences should be central to our understanding of how public dissent is policed, how such responses are legitimised and, ultimately, how they can be resisted. At the time of writing, over a thousand climate change protesters from the ‘Extinction Rebellion’ movement who were arrested in London in early 2019 are awaiting their fate. The Home Secretary, Sajid Javid, has called on the police to use “the full force of the law” against those involved.[[119]](#footnote-119) There is an urgent need for empirical, socio-legal research into the operation of public order policing powers in practice. In doing so, it is vital that academic researchers move beyond official narratives and consider the material conditions experienced by protesters.

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2. B. Jackson and T. Wardle, *The Battle for Orgreave* (1986) 36. [↑](#footnote-ref-2)
3. K. Jones ‘The Limits of Protest: Television News Coverage of the Orgreave Picket During the British Miners' Strike 1984-5’ in *Coal, Culture and Community*, ed. D. Waddington (1993) 87. [↑](#footnote-ref-3)
4. HC Deb 19 June 1984 v62 c137. [↑](#footnote-ref-4)
5. S. Milne, ‘Police to pay £425,000 to 39 arrested in miners’ strike’ *Guardian*, 20 June 1991, 1. [↑](#footnote-ref-5)
6. P. Scraton, *The Report of the Hillsborough Independent Panel* (2012). [↑](#footnote-ref-6)
7. HC Deb 31 October 2016 v616WS. [↑](#footnote-ref-7)
8. This is explored further in J. Gilmore et al., ‘“That is not facilitating peaceful protest. That is dismantling the protest”: anti-fracking protesters’ experiences of dialogue policing and mass arrest’ (2019) 29 *Policing and Society* 36. [↑](#footnote-ref-8)
9. D. Mead, *The New Law of Peaceful Protest* (2010) 25. [↑](#footnote-ref-9)
10. HRA 1998, s.6. [↑](#footnote-ref-10)
11. HRA 1998, s. 2 [↑](#footnote-ref-11)
12. E. Cape and R. Young (eds.), *Regulating Policing: The Police and Criminal Evidence Act 1984 Past, Present and Future* (2008). [↑](#footnote-ref-12)
13. C. Philips, *The Royal Commission on Criminal Procedure, Cmnd 8092* (1981). [↑](#footnote-ref-13)
14. HM Inspectorate of the Constabulary, *Adapting to Protest – Nurturing the British Model of Policing* (2009). [↑](#footnote-ref-14)
15. Gilmore et al., op. cit. n. 8 [↑](#footnote-ref-15)
16. HC Deb 7 November 1983 c102. [↑](#footnote-ref-16)
17. M. McConville et al. *The Case for the Prosecution: Police Suspects and the Construction Of Criminality* (1991). [↑](#footnote-ref-17)
18. K. Bullock and P. Johnson, ‘The impact of the Human Rights Act 1998 on policing in England and Wales’ (2012) 52 *Brit J Criminol* 630, at 633. [↑](#footnote-ref-18)
19. Gilmore et al., op. cit., n. 8. [↑](#footnote-ref-19)
20. R. Schlembach, ‘Undercover policing and the spectre of ‘domestic extremism’: the covert surveillance of environmental activism in Britain’ (2018) 17 *Social Movement Studies* 491. [↑](#footnote-ref-20)
21. See, for example, M. Kiai , *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United Kingdom of Great Britain and Northern Ireland, Human Rights Council, Thirty-fifth session 6-23 June 2017* (2017). [↑](#footnote-ref-21)
22. D. Waddington et al., *Split at the Seams?: Community, Continuity and Change after the 1984-5 Coal Dispute* (1991). [↑](#footnote-ref-22)
23. East et al., op. cit., n.1. [↑](#footnote-ref-23)
24. J. Coulter et al. *A State of Siege: Politics and Policing of the Coalfields* (1984). [↑](#footnote-ref-24)
25. J. Percy-Smith and P. Hillyard, ‘Miners in the Arms of the Law: A Statistical Analysis’ (1985) 12 *J. of Law and Society* 345. [↑](#footnote-ref-25)
26. *Mansfield Justices* *ex. p. Sharkey and others* [1984] I.R.L.R. 496. [↑](#footnote-ref-26)
27. HC Deb 31 October 2016 v616WS. [↑](#footnote-ref-27)
28. Leon Brittan, Secretary of State for the Home Department, HC Hasard 16 May 1985 v79 c5. [↑](#footnote-ref-28)
29. P. Scraton, ‘If You Want a Riot, Change the Law: The Implications of the 1985 White Paper On Public Order’ (1985) 23 *J. of Law and Society* 385. [↑](#footnote-ref-29)
30. POA 1986, s.1. [↑](#footnote-ref-30)
31. *Field v Receiver of Metropolitan Police* [1907] 2 K.B. 853 at 860. [↑](#footnote-ref-31)
32. The word ‘insulting’ was removed from the offence by the Crime and Courts Act 2013, s.57. [↑](#footnote-ref-32)
33. CJPOA 1994, s.154. [↑](#footnote-ref-33)
34. CJPOA 1994, s. 68. [↑](#footnote-ref-34)
35. HC Deb 11 January 1994 v235 c29. [↑](#footnote-ref-35)
36. *DPP v Bayer and Others* (2003) 167 JP 666; *R v Barkshire* [2011] EWCA Crim 1885. [↑](#footnote-ref-36)
37. *Swain v DPP* [2006] UKHL 16. [↑](#footnote-ref-37)
38. *Bauer & Ors* v DPP [2013] EWHC 634 (Admin). [↑](#footnote-ref-38)
39. D. Mead, ‘A chill through the back door? The privatised regulation of protest’ (2013) Jan *Public Law* 100-118. [↑](#footnote-ref-39)
40. Protection from Harassment Act 1997 (c.40), s.3. [↑](#footnote-ref-40)
41. CJPOA 1994, s.27. [↑](#footnote-ref-41)
42. Police and Justice Act 2006, s.10 and Schedule 6. [↑](#footnote-ref-42)
43. PACE 1984, s.30A. [↑](#footnote-ref-43)
44. E. Cape and R. Edwards, ‘Police Bail Without Charge: The Human Rights Implications’ (2010) 39 *Cambridge Law J.* 529. [↑](#footnote-ref-44)
45. An exception was created under Section 68(3) of the Policing and Crime Act 2017, which makes it an offence to fail to comply with a travel restriction condition. [↑](#footnote-ref-45)
46. PACE 1984, s.4A. [↑](#footnote-ref-46)
47. There is no provision to extend ‘street bail’: s.30B(8) PACE 1984 [↑](#footnote-ref-47)
48. See above, n. 32. [↑](#footnote-ref-48)
49. C. Wells and O. Quick, *Reconstructing Criminal Law* (2010, 4th edn.) 162. [↑](#footnote-ref-49)
50. The expansion of public order law has developed in the context of a broader intensification of criminal law and police powers, characterised by a radical shift from reactive to preventative criminal law and justice. See, for example, A. Ashworth, ‘Is criminal law a lost cause’ (2000) 116 *Law Quarterly Review* 225; H. Carvalho, *The Preventive Turn in Criminal Law* (2017). [↑](#footnote-ref-50)
51. P. Waddington, *Liberty and Order* (1994). [↑](#footnote-ref-51)
52. *id*., p. 39. [↑](#footnote-ref-52)
53. A. Sanders et al. *Criminal Justice* (2010, 4th edn.) 138-40. [↑](#footnote-ref-53)
54. Waddington, op. cit., n. 51, p. 39. [↑](#footnote-ref-54)
55. S. Barkan, ‘Criminal Prosecution and the Legal Control of Protest’ (2006) 11 *Mobilization* 181, at 190. [↑](#footnote-ref-55)
56. This point is explored further in Gilmore et al., op. cit., n. 8. [↑](#footnote-ref-56)
57. See, for example, S. Choongh, ‘Policing the Dross: A Social Disciplinary Model of Policing’ (1998) 38 *B. J. of Criminology* 623. [↑](#footnote-ref-57)
58. # With the increased national coordination of protest policing since the 1980s, this distinction is arguably becoming less significant. This point is developed further in W. Jackson et al. ‘Policing unacceptable protest in England and Wales: A case study of the policing of anti-fracking protests’ (2018) 39 *Critical Social Policy* 23.

    [↑](#footnote-ref-58)
59. See, for example, A. Gillan, ‘Protests against Gaza attacks planned across UK this weekend’ *Guardian*, 31 December 2008, p. 4. [↑](#footnote-ref-59)
60. Metropolitan Police Service, ‘Appeal to trace demonstration crime suspects’ (2009) <http://cms.met.police.uk/news/appeals/appeal\_to\_trace\_demonstration\_crime\_suspects>. [↑](#footnote-ref-60)
61. *id*. [↑](#footnote-ref-61)
62. See, for example, J. Davenport, ‘Wanted: The hard core in Israeli Embassy riots’ *The Evening Standard*, 22 January 2009, p. 22. [↑](#footnote-ref-62)
63. Figures derived from court observations and FOIA 2000 requests by the author to the MPS, 11 February 2011 and the CPS, 14 February 2011. [↑](#footnote-ref-63)
64. Interview with Alan (solicitor), 6 July 2010 and Bob (solicitor), 6 July 2010. [↑](#footnote-ref-64)
65. The case was reported in S. Hattenstone and M. Taylor, ‘Video evidence held back by Met, lawyers say’, *Guardian*, 26 March 2010, p. 17. [↑](#footnote-ref-65)
66. *R v Lahouidek* [2010] EWCA Crim 738; *R v Alhadded and Others* [[2010] EWCA Crim 1760](http://www.lexisnexis.com:80/uk/legal/search/enhRunRemoteLink.do?ersKey=23_T15622097900&langcountry=GB&backKey=20_T15622105754&linkInfo=F%23GB%23EWCACRIM%23year%252010%25page%251760%25sel1%252010%25&service=citation&A=0.3045230381694165); *R v Kalaf* [2010] EWCA Crim 2525; *R v Askew and Others* [2010] EWCA Crim 2102. [↑](#footnote-ref-66)
67. The case was reported in T. Peck, ‘Police payout for men beaten at Gaza protest’ *The Independent*, 13 July 2010, p. 16. [↑](#footnote-ref-67)
68. *Minio-Paluello v The Commissioner of Police of the Metropolis* [2011] EWHC 3411. [↑](#footnote-ref-68)
69. *id*, at 687. [↑](#footnote-ref-69)
70. Information derived from a FOIA 2000 request by the author to the MPS, 13 February 2013. [↑](#footnote-ref-70)
71. Figures derived from a FOIA 2000 request by the author to the MPS, 17 February 2010 and 17 January 2011 and CPS, 14 February 2011. [↑](#footnote-ref-71)
72. *Id*. [↑](#footnote-ref-72)
73. *The Bolton News*, ‘Government urged to ban EDL rally’, 4 March 2010 <http://www.theboltonnews.co.uk/news/districtnews/districtsttoz/5040583.Government\_urged\_to\_ban\_EDL\_rally/>. [↑](#footnote-ref-73)
74. *The Bolton News* ‘Bolton gears up as thousands of campaigners plan protest rally’, 17 March 2010 <http://www.theboltonnews.co.uk/news/districtnews/districtsttoz/5065166.Bolton\_gears\_up\_as\_thousands\_of\_campaigners\_plan\_protest\_rally/> [↑](#footnote-ref-74)
75. *The Bolton News*, ‘Officers praised following Bolton demonstration’, 20 March 2010 <http://www.theboltonnews.co.uk/news/5074134.UPDATE\_\_Officers\_praised\_following\_Bolton\_demonstration/>. [↑](#footnote-ref-75)
76. Information derived from FOIA 2000 response to the author from GMP, 12 May 2010. [↑](#footnote-ref-76)
77. The case was reported in H. Carter, ‘Inquiry after police hit anti-fascist protester’ *Guardian*, 22 October 2010, p. 22. [↑](#footnote-ref-77)
78. BBC News, ‘Greater Manchester Police settles anti-EDL protester claims’ (2013) <https://www.bbc.co.uk/news/uk-england-manchester-23902022>. [↑](#footnote-ref-78)
79. The case was reported in BBC News, ‘Greater Manchester protest charge PC formally cleared’ (2013) <<http://www.bbc.co.uk/news/uk-england-manchester-22938223>>. [↑](#footnote-ref-79)
80. Figures derived from FOIA response, op. cit., n. 77. [↑](#footnote-ref-80)
81. The data for this case study were gathered as part of a collaborative research project. The key findings from the project are published in J. Gilmore et al. *‘Keep Moving! Report into the policing of the Barton Moss Community Protection Camp* (2016) CURB University of York / CCSE Liverpool John Moores University. [↑](#footnote-ref-81)
82. ‘Fracking’ - or ‘hydraulic fracturing’, is the process of extracting shale gas from solid rock deep below the earth’s surface, by pumping water, sand and chemicals at high pressure into the rock. [↑](#footnote-ref-82)
83. ‘Lock-ons’ and blockades are techniques used by protesters to make it difficult to remove them from their place of protest. Blockades tend to involve protesters linking arms and legs in a line or circle, whereas ‘lock-ons’ often involve the use of equipment such as bicycle locks, padlocks and chains. [↑](#footnote-ref-83)
84. Figure derived from a FOIA 2000 request by the author to GMP, 1 June 2015. [↑](#footnote-ref-84)
85. Data derived from a FOIA 2000 request by Netpol to GMP, 21 July 2014 [↑](#footnote-ref-85)
86. Greater Manchester Police, ‘More than 80 protesters arrested so far over course of anti-fracking protest’ (2014) <http://www.gmp.police.uk/content/WebsitePagesMobile/3C645B64D74E21C280257C6900258299?OpenDocument>. [↑](#footnote-ref-86)
87. *id*. [↑](#footnote-ref-87)
88. Data derived from a FOIA 2000 request by the author to GMP, 1 June 2015. [↑](#footnote-ref-88)
89. Highways Act 1980, s.137. [↑](#footnote-ref-89)
90. CJPOA 1994, s.68. [↑](#footnote-ref-90)
91. PACE 1984, s.4A. [↑](#footnote-ref-91)
92. Data derived from a FOIA 2000 request by the author to GMP, 1 June 2015. [↑](#footnote-ref-92)
93. The case was reported in *Salford Star*, ‘Greater Manchester Police Barton Moss arrests case set to collapse’, 13 February 2014 <http://www.salfordstar.com/article.asp?id=2144>. [↑](#footnote-ref-93)
94. *Salford Star*, ‘Court dismisses charges against three more Salford anti-fracking campaigners’ 7 May 2014 <http://www.salfordstar.com/article.asp?id=2257>. [↑](#footnote-ref-94)
95. *id.* [↑](#footnote-ref-95)
96. Figures derived from a FOIA 2000 request by the author to GMP, 1 June 2015. [↑](#footnote-ref-96)
97. Cited in East et al. op. cit. n. 1 p.308. [↑](#footnote-ref-97)
98. N. El-Enany, 'Innocence Charged with Guilt': The Criminalisation of Protest from Peterloo to Millbank’ in *Riot, Unrest and Protest on the Global Stage*, ed. D. Pritchard and F. Pakes 72. [↑](#footnote-ref-98)
99. J. Winterton and R. Winterton, *Coal, Crisis and Conflict: The 1984-85 Miners' Strike in Yorkshire* (1989). [↑](#footnote-ref-99)
100. Writing in the context of overt police surveillance, Aston has noted the psychological, social and political harms that can arise from intensive surveillance operations: V. Aston, ‘State Surveillance of Protest and the Rights to Privacy and Freedom of Assembly: A Comparison of Judicial and Protester Perspectives’ (2017) 8 *European J. of Law and Technology* 1. [↑](#footnote-ref-100)
101. House of Commons Home Affairs Committee, *Policing of TUC March on 26 March 2011* (2011), Oral Evidence, 29 March 2011, HC 917-I, Q.12. [↑](#footnote-ref-101)
102. R. East et al., op.cit. n. 1, p. 309. [↑](#footnote-ref-102)
103. The tactic of seeking personal information during and as a condition of leaving a police cordon was found to be unlawful by the High Court in *Mengesha v Commissioner of Police of the Metropolis* [2013] EWHC 1695 (Admin). The judgment did not alter the police power to stop and search e.g. under PACE s.1 or CJPOA s.60. [↑](#footnote-ref-103)
104. *McCann v Crown Prosecution Service* [2015] EWHC 2461 at 31. [↑](#footnote-ref-104)
105. K. Rawlinson, ‘Revealed: Police using pre-charge bail to muzzle protesters’ *Guardian*, 25 December 2015 <https://www.theguardian.com/uk-news/2014/dec/25/revlealed-police-using-pre-charge-bail-muzzle-protesters>. [↑](#footnote-ref-105)
106. For this reason, recent reforms to police bail under the Policing and Crime Act 2017 are likely to prove insufficient. Whereas a person released under police bail must now be informed in writing of a decision not to bring charges in their case (PACE s. 37(6A), (6B) and (8ZA)), no such obligation exists in relation to a person released without bail (PACE s. 34(5B) and (5C), and s.37(6A) and (6B)). Early evidence suggests that the police are using release without bail ‘under investigation’ as a means to bypass the safeguards attached to police bail. Figures released under the FOIA 2000 suggest that whilst the average length of time someone was held on police bail before being charged or released was 90 days prior to the introduction of the 2017 reforms, by 2019 this had increased to 139 days for those released ‘under investigation’ without bail conditions attached: The Telegraph, ‘Changes to police bail has led to further delays and more uncertainty’ 18 March 2019 <https://www.telegraph.co.uk/news/2019/03/18/changes-police-bail-has-led-delays-uncertainty/>. See also E. Cape, ‘The police bail provisions of the Policing and Crime Act 2017’ (2017) 8 *Criminal Law Review* 587. [↑](#footnote-ref-106)
107. Although direct comparisons are difficult to make, according to Ministry of Justice figures the conviction rate within the criminal justice system as a whole is around 83 per cent. For public order offences this rises to 96 per cent: Ministry of Justice, Criminal justice system statistics quarterly: December 2014 (2015) <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2014>. [↑](#footnote-ref-107)
108. This information was garnered from interviews with protesters and their legal counsel. This point is considered further in J. Gilmore ‘[Criminalizing Dissent in the ‘War on Terror’: The British State’s Reaction to the Gaza War Protests of 2008-2009](https://pure.york.ac.uk/portal/en/publications/criminalizing-dissent-in-the-war-on-terror(f2716495-cc52-488c-971d-a22d83449836).html)’ in *Global Islamophobia: Muslims and Moral Panic in the West*, eds. G. Morgan and S. Poynting (2012) 197. [↑](#footnote-ref-108)
109. Cited in N. Baxter, ‘Policing Social Conflict: A Balanced Approach’ (1999) 72 *The Police J.* 109 at 111. [↑](#footnote-ref-109)
110. S. Milne, *The Enemy Within: The Secret War Against the Miners* (2014). [↑](#footnote-ref-110)
111. M. Brogden *The Police: Autonomy and Consent* (1982) 123. [↑](#footnote-ref-111)
112. Bunyan, op. cit. n. 1. [↑](#footnote-ref-112)
113. I. Loader and L. Zedner, ‘Police Beyond Law?’ (2007) 10 *New Criminal Law Rev.* 142; D. Dixon, *Law in policing* (1997). [↑](#footnote-ref-113)
114. I. Balbus, *The Dialectics of Legal Repression* (1973). [↑](#footnote-ref-114)
115. S. Hall and P. Scraton ‘Law, Class and Control’ in *Crime and Society,* ed. M Fitzgerald et al (1981) 460. [↑](#footnote-ref-115)
116. P. Hillyard, *Suspect community: People’s Experience of the Prevention of Terrorism Acts in Britain* (1993), p. 262. [↑](#footnote-ref-116)
117. The comments were aired on the Channel 4 documentary, ‘Coppers’, 29 November 2010. [↑](#footnote-ref-117)
118. Bunyan, op. cit n. 1. [↑](#footnote-ref-118)
119. ### Mason, op. cit. n. 57.

     [↑](#footnote-ref-119)