Green Liberties

The erosion of citizens' rights to protest and the impact on the UK environmental movement

Bethan Harris & Jonathon Porritt

September 2011

Jonathon Porritt is one of the UK's most eminent environmentalists. A former executive director of Friends of the Earth, he co-founded Forum for the Future in 1996, and was Chair of the UK Sustainable Development Commission (SDC) between 2000 and 2009.

"Much of the work I did for this was done while I was a Fellow at Durham University's Institute of Advanced Study between January and March this year. I am very grateful to the Institute for the space (both locational and conceptual) that this allowed me."

Bethan Harris is a freelance sustainability consultant and researcher. She is a former scholar of Forum for the Future's Masters in Sustainable Development (2008-09), and has since worked for the UK Government and leading businesses on environmental issues.

This report would not have been possible without the support and input of many individuals and organisations.

Special thanks go to the following for their valuable input to our research and their continued efforts to defend rights to protest in the UK: Anna Watson (Friends of the Earth), Sam Walton & Frances Wright (Climate Camp Legal Team), Tim Gee, Joss Garman, Mike Schwarz, Liberty, David Babbs, Caroline Lucas, Philip Wood, Bond and Val Swain (FIT Watch).

Images have been reproduced with the kind permission of Mike Russell and Amy Scaife

www.jonathonporritt.com/contact

Contents

Executive summary

The Background

The recent riots in London and other English cities have sent shockwaves through the political establishment – and the soul-searching continues as to why and how it happened.

There is of course a world of difference between the utterly reprehensible and largely criminal behaviour of most of those directly involved in the riots, and the kind of responsible protect and dissent that this report focuses on.

But some of the more 'visceral' responses to the riots demonstrate yet again a readiness on the part of some to set aside some of the basic rights and entitlements that underpin individual freedom in the UK today – trying to ban the use of social media, for instance, or imposing curfews – in order to prosecute the criminal behaviour of a tiny minority. By the same token, the riots have provided a pretext for another round of vitriolic and utterly disproportionate attacks on the Human Rights Act.

In all the sound and fury that the 2011 riots have given rise to, we need to keep a cool head when reflecting on the entitlements of citizens in the UK in exercising their rights to protest.

For these are indeed difficult times. Most commentators assume that the economy is going to stay pretty flat for the next couple of years. The depth and scale of the cuts in public expenditure are only now becoming apparent, with an inevitable increase in public concern and anger. And on the climate change front, although the Government has confirmed its commitment to the UK's hugely ambitious greenhouse gas targets, there's clearly something of a backlash against the UK's climate targets going on out there – amongst Tory local authorities and back benchers, for instance, and in many parts of the media.

The next few years could easily witness a huge increase in highly polarized politics and growing civil dissent. There is a lot of renewed political energy at the local and community level, and a readiness to engage that gives the lie to lazy media commentaries about political apathy and inertia.

It is therefore a timely moment to look at the legal framework within which organisations and individuals may choose to protest about the way in which the government of the day is seeking to address these challenges. And, regrettably, the picture that emerges as a consequence of all the recent changes regarding a citizen's 'right to protest' is a deeply disturbing one.

This is obviously of huge concern across the whole gamut of controversial social issues. Our interest – as sustainable development activists – relates more directly to the environmental agenda and to the overlap between civil liberties and radical environmental campaigning.

What we've done is to review how a whole raft of legislative changes since 1997 have impacted on the citizen's right to protest on environmental or climate change issues, and to draw together evidence from environmental NGOs to demonstrate the systematic erosion of civil liberties that has taken place over the last ten years.

Principal Conclusions

- The complex balance between public order and civil liberties goes back throughout history. Citizens have often been presented with a choice between freedom and security, and far too often the State uses the convenience of 'security' to its own ends. However, over the last fifteen years, there has been a systematic erosion of civil liberties in the UK regarding the right to non-violent protest. This is particularly true in the area of environmental campaigning, where we've seen routine targeting by the police to restrict and prevent protesting activity.

- Rights in relation to protest are systematically being eroded, restricting actions and freedoms that have previously been taken for granted. Although these have principally impacted on grassroots campaigning groups, mainstream NGOs should not assume that they are immune to these changes.

- Traditionally, the 'environment community' and the 'civil liberties community' have seen themselves as separate elements. Mutually complementary, but working in separate silos. It is only Greenpeace and Friends of the Earth that have sought to draw out some of the connections between environmental and civil rights campaigning more dynamically.

- There would appear to be scant evidence of engagement on the part of most mainstream environmental NGOs in tackling the root causes threatening the civil liberties agenda. However, there is a strong case to be made that the erosion of civil liberties in general (and of the right to protest in particular) over the last ten years is directly relevant to the environment movement in the UK.

- Despite the issue of protest falling within the scope of public order, a growing number of laws impacting on campaigners' rights aren't directly designed for this reason. Yet 'legislation creep' has resulted in a number of these laws being misused in seeking to curtail the rights of protestors.

- In promising society 'security', a number of anti-terror measures have been introduced after the attack on the World Trade Centre in September 2001). These have been routinely used out of context and frequently against protest groups. Although the tide is shifting away from misuse of anti-terror laws, these groups are also the target of a number of legislative changes introduced under both Tony Blair and Gordon Brown, including on harassment, anti-social behaviour and trespass.

- In it's Programme for Government, the Coalition Government pledged to 'restore rights to non-violent protest', and to introduce safeguards against the misuse of anti-terror laws. Despite this tough stance, and a personal commitment from the Deputy Prime Minister, the Freedom Bill, currently making it's way through Parliament, has little to say in relation to protest.

- In opposition, the Liberal Democrats pledged to remove a number of laws targeted at protest including the offence of Aggravated Trespass. Yet despite being in power, the draft Freedom Bill currently in front of Parliament has no mention of it at all.

- 'Legislation creep' is just one aspect of a broader shift in government attitudes, which has made the activities of campaigners harder to pursue in recent years. Policing strategy and tactics have become increasingly disruptive to environmental campaigning. This is part of a national strategy to target these groups as 'domestic extremists', the justification for which is entirely spurious.

- The high profile cases of undercover police officers such as Mark Kennedy and Lynn Watson, both of whom infiltrated environmental groups over the last few years, are just the tip of a very large iceberg of police tactics, which include kettling, stop and search, surveillance and often cynical media management.

- Furthermore, there is growing evidence that a number of companies are deeply implicated in the infiltration of environmental groups, not only directly through their own activities, but indirectly through collaboration with the police.

- Taken together, these lead to a systematic erosion of rights to protest on environment issues. The effect this has on existing protest groups has been profound. The continued framing of protest as 'illegal' and 'violent' can have the highly regrettable effect of stifling mobilization for environmental causes. Potential campaigners are deterred through fear of violence, identification and potential impacts on future job prospects. Potential sympathisers are encouraged to associate the environment with radicalism or even extremism, in a way that is prejudicial to global attempts to mainstream public support for pro-environmental action.

Recommendations

In undertaking this research we have been heartened by the many people currently working to improve rights to protest in the UK, from journalists, solicitors, MPs to a myriad of grassroots environmental groups.

The aim of this paper is to build on this momentum and to assist in developing a consensus on those actions required to counter the systematic erosion of the rights to protest - both by improving the quality of communications on these crucial issues, and by working with progressive Parliamentarians to bring about legislative changes.

This paper does not present an exhaustive list of changes, nor a 'blueprint for action' as such. However by drawing together existing campaigns and activities, and identifying gaps, we hope to make a start. More detailed recommendations can be found throughout Chapter Five. Below is a list of key game changers that we believe require immediate action.

1. A coordinated environmental movement

Firstly, we believe that there is a need to reach out to the broader Environment Movement, without whose interest and support it will be impossible to make progress on finding a better way forward. NGOs are engaged on an ad-hoc basis in these

issues, particularly in relation to their own members, but without adding their lobbying and campaigning expertise to the actions outlined below, we are unlikely to see the wholesale changes needed to counter the systematic erosion of rights to protest.

2. Remove the offence of aggravated trespass

This was promised by the Liberal Democrats in opposition, but has yet to be brought forward as part of the Freedom Bill. We believe that aggravated trespass is both unnecessary and unfair, putting power into the hands of business and organisations, taking it away from protestors. The charge of aggravated trespass duplicates other public order law and has the effect of criminalising trespass, a civil tort. The campaigns being pursued in relation to the trials regarding Fortnum and Mason and Ratcliffe-on-Soar are to be applauded. However, exposing inappropriate police behaviour is not enough – what is needed is a concerted campaign to hold the Liberal Democrats to account to remove the offence of aggravated trespass through the Freedom Bill as well as the police powers that go with it.

3. A review into pre-charge bail conditions

Pre-charge bail conditions are routinely misused explicitly to discriminate against protestors, placing often absurd and illiberal conditions on them for long periods of time without any justification. Recent debates surrounding the use of police bail provide an excellent opportunity to conduct a full and proper review into use of pre-charge bail in relation to protestors. We support the work being led by the Network for Police Monitoring in calling for this review, and believe it is in the interest of all environmental NGOs to do the same.

4. An high-level review into police surveillance

The case of Mark Kennedy has shocked many people and questions continue to be asked across the police and government about why and how money could be wasted in this way. The independent inquiry announced in June is welcomed, but as the campaigning group *No Police Spies* argue, this must go beyond the high-profile case of Mark Kennedy and look too at the overt and covert surveillance tactics routinely used by the police, such as photography by Forward Intelligence Teams and the collection of personal data during searches.[1]

5. A code of conduct for 'kettling'

The use of 'kettling' has led to many instances of unnecessary violence on both sides of the police line.

The different judicial reviews into kettling, already underway, present an opportunity to learn from past mistakes and for the protest community and police forces to work together to develop a code of conduct in line with HMIC recommendations. There are a number of grassroots organisations, notably *The Green and Black Cross*, already engaged in legal observation of protest and their expertise should be harnessed by the relevant police authorities.

6. Remove the restrictions to protest in the vicinity of Parliament

The restrictions on protest in the vicinity of Parliament are both ludicrous and hypocritical given the widespread support government has for similar protests in the Middle East. Although the Government is taking some steps to remove these restrictions, through the Police Reform and Social Responsibility Bill, the restrictions still prevent campaigners setting up camp, or using loud speakers during protests. Both of these measures would render any future protests useless and should be revised so that sufficient provisions can be made for long-running campaigns that are in the public interest. *Liberty* proposes removing all restrictions, and instead include provisions for courts to prevent protest in cases where it will seriously disrupt public order, cause harm to public property or restrict the rights of others.

1. Protest and the Environment Movement

Over the last fifteen years, there has been a systematic erosion of civil liberties regarding the right to non-violent protest. This is particularly true in the area of environmental campaigning where we have seen routine targeting by the police to restrict and prevent protesting activity. The media exposé, earlier this year, of the undercover police agent, Mark Kennedy, and his infiltration of environmental protest organisations, together with the brutal and illegal tactics used in policing of the G20 protest in April 2009, are just a couple of the many high-profile examples that protest groups have become accustomed to.

The Coalition Government came together with a strong position on civil liberties. In its Programme for Government, it pledged to "restore rights to non-violent protest"[3], to introduce safeguards against misuse of anti-terror laws, and to establish a Commission to investigate a British Bill of Rights to enshrine the commitments made under the European Convention. And for good reason. Non-violent protest has a proud and significant heritage both within the UK and globally, with the civil rights movement and suffragettes amongst the most notable of successes.

Protest has long been an integral part of the environmental movement. As far back as 1932, ramblers took part in a mass trespass of Kinder Scout in Derbyshire to protest against the lack of access walkers faced in the Welsh and English countryside. This historic triumph continues to benefit walkers expressing their 'right to roam' today.

Despite the Coalition Government's strong stance, and a personal commitment from the Deputy Prime Minister, the Freedom Bill, currently making its way through Parliament, has little to say in relation to protest. As is the case with media coverage of the Bill.

When it was first published in March, there was very little coverage, aside from a smattering of articles applauding a more common sense approach to the use of CCTV by local councils and rules around vetting volunteers who work with children. At exactly that time, our papers were filled with coverage of the resignation of the Egyptian President Hosni Mubarak. Over twenty days of mostly peaceful protest, more than one million citizens gave the world a masterclass in using people power to bring about change. Western countries have unanimously applauded their success. Yet ironically, on the day that Mubarak stepped down, a Bill was announced which fails to protect the rights of UK citizens to do what enabled

the protestors in Tahrir Square to achieve this success. Legislation currently makes it a criminal offence to campaign without consent in Parliament Square. Although the Government proposes to change this, it still makes it illegal to set up a camp in the Square.

This is just one of the many pieces of legislation which restricts protest, reinforced by a culture of policing which routinely uses controversial tactics (including kettling and surveillance) to contain protestors. Of course, in the UK we have many democratic rights that the Egyptians still do not. We can, for instance be sure that our vote in the ballot box is counted. However, as part of this democratic system, we should have the right to be able to voice dissent at whatever we choose.

This is not just an issue for civil rights campaigners or environmental activists. The cuts, and the Coalition's drive for localism, have already begun to result in radical changes across our society and economy. The far-reaching impact of these cuts was illustrated by the 250,000-strong crowd marching through the streets of London on 26th March this year, with protestors representing many different causes from disability support to corporate tax dodging. We all have the right to protest in order to challenge decisions taken by this (or any other) government, and to seek to make those changes work as well as possible for society.

Traditionally, the 'environment community' and the 'civil liberties community' have seen themselves as separate elements – albeit working within a broad spectrum of progressive civil society organisations intent on improving the lives of individuals and communities whilst not damaging the prospects of future generations. Mutually complementary, therefore, but working essentially in separate silos.

It is only Greenpeace and Friends of the Earth that have sought to draw out some of the connections between environmental and civil rights campaigning (see below) more dynamically.

It is of course recognised by all environmental organisations that the work they do is only possible by virtue of this country's complex foundation of legal safeguards, democratic entitlements, human rights and so on. As is the case in most mature democracies, much of this underpinning institutional infrastructure is pretty much taken for granted. Environmental campaigners in countries that do not have the benefits of such an infrastructure find it hard to hide their astonishment at this apparent complacency.

So perhaps it's not all that surprising that there would appear to be scant evidence of engagement on the part of most environmental NGOs in the civil liberties agenda. Historically, the lack of any formal 'environmental justice movement' in the UK (of the kind that has played such an influential role in the United States over the last 20 years) has left the 'civil rights' dimension of environmentalism looking decidedly threadbare.

One of the consequences of that was the absence of any coordinated approach by the mainstream environmental NGOs over the last decade as the Labour government brought forward a constant flow of legislation affecting people's civil liberties in general and the right to protest in particular.

There are, however, some important exceptions to this general state of affairs. Greenpeace has for many years been participating in direct action and supporting those who have been arrested as a result including those involved in the protests at Kingsnorth Power Station. Friends of the Earth has its 'Rights and Justice' campaign, which although primarily global in focus, has occasionally taken up the cudgels on behalf of organisations like 'Critical

Mass' (a group of committed cyclists who participate in spontaneous rides through city centres in order to promote the needs of cyclists). There are also the many grassroots activist groups outside of the mainstream environment community which support and actively campaign on the right to protest.

Although acting on a case-by-case basis is commendable, we would argue that the systematic erosion of rights to protest requires an equally systematic and strategic approach to tackling it.

Most mainstream environmental NGOs would point out that they have nothing to apologise for in this regard. As in every other NGO sector, there is never enough resource (time and money) to cover the directly relevant territory on which they campaign. But at another level, the interpretation of 'directly relevant', when it comes to civil liberties, has been very narrowly interpreted. There is a strong case to be made that the erosion of civil liberties in general (and of the right to protest in particular) over the last 10 years is very directly relevant to the environment movement in the UK – and that's the case we will be seeking to make in this paper.

Rights to Protest

So what do we mean by 'the right to protest'? The 'spectrum' of legitimate protest in the UK today remains a very wide one – all the way from sounding off in the privacy of one's own space, or writing a letter to one's MP, or signing a petition, or going on a march, or 'sitting in', or boycotting a particular company's products, or protesting outside a power station, or being part of Climate Camp, all the way through to dedicating one's life to stopping something happening, up to an including the use of non-violent direct action.

It is right to acknowledge that our right to protest is indeed a privilege – but that makes it no less invidious when government seeks to curtail that right or repress those who are legitimately exercising that right. And that's where we are in the UK today.

For some, that privilege undoubtedly includes the right to take non-violent direct action. It's difficult to generalise about the relationship between the environment movement and non-violent direct action, not least because the notion of an 'environment movement' implies some kind of homogeneity. Whilst we would argue that there are indeed some core principles that are common to almost all environmental organisations, there is no such common ground when it comes to **tactics** – hence the wide diversity of opinions (expressed both individually and 'corporately') regarding the appropriateness of non-violent direct action as a tactic in pursuance of particular environmental causes. Indeed, this is further complicated by the rather obscure guidelines from the Charity Commission on whether charities are or are not permitted to participate in or to support unlawful direct action.

This is not the place to review that complex relationship. But two things do need to be said. First, the understandable ambivalence of many environmental NGOs (given their own history, positioning and tactics) regarding the role of non-violent direct action should be no barrier to acknowledging its legitimacy within the broader environment movement. The idea that direct action campaigning somehow imperils the overall credibility of environmental campaigning as a whole is one for which there is no evidence – and 'credibility with whom?' is the central question anyway.

Second, we are not dealing in this paper only with the role of the direct action end of the protest spectrum, but with the whole gamut of protest activities, including marching, petitioning, bearing

witness, making an nuisance of oneself – all those things on which the vitality of our democracy absolutely depends. And as this paper will later demonstrate, rights in relation to protest are constantly being eroded, restricting actions and freedoms that would have previously been taken for granted. Mainstream NGOs should not assume that they are immune to these changes.

We will therefore set out the current and potential barriers to protest, particularly for environment groups. We will identify case studies and issues in the use of legislation, police tactics and behaviour of companies. Taken collectively, these examples point to a systematic erosion of civil liberties and the paper will set out the implications of this, not only for activists but for the wider environment community and civil society. Finally, Section Five will identify suggestions as to how the environment community and civil libertarians can work collectively to restore the rights to protest.

2. Tolerating the Intolerable

Before we look at the interpretation of the law in the next chapter, we must first analyse the legal framework itself and the recent legislative changes, which have both directly and indirectly impacted on people's rights to protest.

The tension between protecting citizens' freedom and protecting their safety is an age-old dilemma facing governments. The very philosophy of a social contract between the state and its citizens depends on a constantly renegotiated balancing act between personal freedom and the security of society as a whole.

The balance between liberty and security was profoundly affected under the previous Labour Government, which now admits in opposition that they got it badly wrong on civil liberties. A number of specific legislative changes were brought in under Labour (see below), and there was a rapid rise in the so called 'surveillance state', with numbers of CCTV cameras rising to astonishing levels. The 2010 Privacy International report on European Privacy and Human Rights ranked the UK amongst the worst overall players in Europe (beaten only by Turkey), with particularly poor performance on surveillance, government data retention and sharing, and constitutional protection.[4] This ranking was slightly up on the 2007 international rankings, which placed the UK in 43rd position out of 47 countries ranked.

Labour's abysmal record on privacy eventually persuaded former Home Secretary David Blunkett to fight against his own Government's plans for further monitoring and holding of data, warning that the Government was leading Britain towards a 'Big Brother' state. He cautioned that: "If we tolerate the intolerable, the intolerable gradually becomes the norm."[5]

Many of the changes under Labour are attributed to the increasing threat of terrorism following the attacks on the World Trade Centre on September 11th 2001. As citizens, we are constantly reminded of the imminent danger posed by terrorism, so much so that the incremental curtailing of freedom for the sake of national security has gone more or less unnoticed by the majority of people. Not only have these anti-terror measures been largely ineffective, they've also been routinely used out of context and frequently against protest groups. These groups were also the target of a number of legislative changes introduced under both Blair and Brown, including on harassment, organised crime, anti-social behaviour and trespass.

Before delving into these changes in detail, it's important to reflect on the way in which legislation of this kind was driven through the parliamentary process during the Labour Government. Given the intensity of the response to particular terrorist attacks, the Government (and the vast majority of MPs) felt they had the strongest possible public mandate to ramp up the level of restrictions on individual rights in order to provide greater security for society as a whole. The fact that many parts of the media were doing everything they could to squeeze every last drop of sensationalist drama out of these attacks made that process even easier, with many MP's reluctant to appear in any way as being 'soft on terrorism'.

As we now know, this mandate was not unwelcome as far the Labour Government was concerned. It had the effect of creating a lot of legislative space for some deeply illiberal policy positions, which ran far deeper in the Labour Party than anyone imagined possible back in 1997.

This combination (powerful public mandate, ongoing media firestorm, and a surprisingly illiberal predisposition within the Labour Party) provided a powerful rationale for setting aside the usual risk assessment processes for any new legislation. Any assessment of the relationship between probability and threat (conscientiously weighing the balance between the likelihood of a terrorist attack and the potential impact of that event) went disregarded, and with it went the balance between individual rights and security risks. Debate about individual rights became almost impossible, with the media amplifying (and sometimes deliberately distorting) public fears about the perceived risks of a terrorist attack. All proportionality was lost, and even the most modest of rights-based approaches to assessing the desirability of a whole raft of new oppressive measures was sacrificed.

It is worth mentioning at this point that not all of the legislation (outlined below) was brought in under the previous Labour Government. Indeed, many people in the Labour Party fought to restore civil liberties as part of their 1997 election bid after a number of controversial proposals under the Tories. However, this period did see an acceleration in legislation to tackle public order issues, and a shift in the way policing of protest was handled so that legislation designed for other ends was inappropriately used against protestors.

We will now set out those legislative changes that have most significantly impacted on protest.

2.1 Public Order Legislation Targeted at Protest

Public Order Act

The Public Order Act (1986) sets out the restrictions and conditions that must be met in order to organise an assembly or a procession. Section 11 requires organisers of a procession to seek permission on the route and details of the protest six days in advance. Failure to comply with the provisions set out by the police on confirmation of the procession is a criminal offence. The provisions are subject to the decision of a senior police offer who can choose to place strict conditions on the route and duration of the protest if he reasonably believes that the assembly will result in disruption to the life of the community. Following an amendment in the 2003 Anti-social Behaviour Act, the legal definition of an assembly in this regard has reduced from over twenty to just two or more. That means that if three people appear in an impromptu protest they could well be breaking the law if they breach any conditions imposed upon them. Although this amendment was due to be dropped before the May 2010 elections this was not the case, and despite promises by the Lib Dems in opposition, there is currently no mention of this in the

Freedom Bill.

Another worrying element of the POA is that the breadth of offences under section 4A and 5 are exceptionally broad and subject to misuse. Section 5 creates an offence for a person to use threatening, abusive or insulting words or behavior or to write in a way that could cause alarm harassment and distress to another person. Section 5 does not require the person to intend to cause insult, however Section 4A does. *Liberty* is concerned about this as there is no legal consensus regarding the definition of 'insulting behaviour', and ultimately it is to the victim's favour if they felt insulted.[6] The scope for prosecution is therefore very broad.

For example, a young man was recently threatened with prosecution under section 5 for displaying a placard criticising Scientology on the grounds that it has caused alarm and distress to others.[7]

Serious Organised Crime

Sections 132 to 137 of the 2005 Serious Organised Crime and Police Act (SOCPA) created exclusion zones preventing protest without prior consent on sites where there could be issues of national security. This originally referred to crown land, following a number of security breaches at Buckingham Palace; however, it was later extended to include the area surrounding Parliament as well as other potential areas at the Home Secretary's discretion.

The site of biggest concern is the area around Parliament Square, not least because it is the closest open space near the House of Commons. The Police Reform and Social Responsibility Bill, currently being debated in the House of Lords, sets out the Coalition's plans to repeal sections of SOCPA so that non-violent protest can take place around Parliament. However, in order to ensure that Parliament Square "remains accessible to all"[8], the Bill will continue to provide powers to the police to prohibit any disruptive activity. This will include the use of loudspeakers and any equipment used to sleep on the square.

When asking a demonstrator not to participate in activity set out in Section 144 of the Bill, police can ban them from this activity for up to three months.[9] This inadequate legal position has been reinforced by a clear dislike on the part of both the Mayor of London and the Prime Minister of the Peace Camp on Parliament Square. Much of this sentiment was directed at Brian Haw, who led the camp; however, after almost ten years of uninterrupted encampment at the site, Haw died earlier this year.

Trespass and Aggravated Trespass

The police have no role in upholding civil law unless a civil injunction has been raised or criminal activity is associated with the civil tort. This is the case for trespass, which in itself is covered by civil law, and only becomes criminal when damage or violence has been caused, or when the trespassers are violating an injunction.

However, this position changed in the 1994 Criminal Justice and Public Order Act, when the offence of 'aggravated trespass' was created. This means that if the trespass is designed to cause intimidation or disruption, then the police have the right to intervene without an injunction and without criminal damage having actually been done. Both the act of aggravated trespass and the failure to comply with a police officer are criminal offences. Originally, this was designed by the previous Conservative government to deal with anti-hunting protestors, as the original wording stipulated trespass in the 'open air'. However, the Labour Government removed this clarification in the 2003 Anti-Social Behaviour Act, so that any type of trespass intended to cause disruption is now a criminal offence.

The charge of aggravated trespass is routinely used against environmental protestors to disrupt protest and planning of protest in advance. Protestors believe it is a tactic to justify pre-emptive suppression of protest, as was the case when over 100 campaigners were arrested on the eve of a planned direct action protest at the Ratcliffe-on–Soar power station.

Aggravated trespass is a particularly worrying development, as it essentially criminalises what has otherwise been a civil wrong, placing it at the disposal of the land or property owner, and simultaneously restricting the right to non-violent protest. Previously, the landowner would have to obtain an injunction, and the police would have intervened only if this injunction was breached or criminal activity took place.

This is not only illiberal (as it restricts non-criminal, non-violent forms of protest), but is wholly unnecessary because anything intended to intimidate, disrupt or obstruct lawful activity is likely to be caught already by other public order offences, criminal damage or assault.

Furthermore, in many instances where charges have been given on the grounds of aggravated trespass, they have later been dropped or appealed, as is the case with the Ratcliffe-on-Soar protests as well as 109 of the UK Uncut protestors arrested following a demonstration at Fortnum and Mason's flagship store in London.

This adds not only to the cost and trauma associated with such arrests, but also points to the fact that without sufficient evidence of violence or criminal damage to pursue an arrest through to conviction, the charge is likely to prove redundant. In that case, the companies themselves, and not the police, should be involved in civil trespass proceedings. Yet, in the case of both Fortnum and

Mason and E.ON, (the owners of Ratcliffe), the companies themselves have avoided expensive civil court proceedings and have instead allowed the State to do their bidding.

As more and more property becomes privatised, through the creation of quasi-public spaces such as shopping centres and car parks, the scope for being charged for aggravated trespass increases. In the case of Appleby vs. UK, The European Court of Human Rights found against the claim that shopping centres should have the same public rights as a High Street. This finding means that the right to peaceful assembly and right to freedom of expression do not apply in shopping centres.[10]

Breach of the Peace

Another way in which the police routinely intervenes in non-criminal protest activity is through 'breach of the peace'. A breach of the peace is defined as an act, done or threatened, which harms a person or property, or puts someone in fear of such harm. Although not a

criminal offence, the police have the power to arrest when they have reasonable grounds for believing a breach is taking place or is imminent.

Breach of the peace is often used pre-emptively. In 2004, Gloucestershire police stopped a coach carrying demonstrators to a protest outside an RAF base. Arguing that the protestors were intending to breach the peace, the police escorted the coach back to London and prevented the passengers from leaving the coach for two and a half hours. When the case was taken to court by one of the demonstrators on board, the court found that the police were entitled to stop the protesters and to prevent them from continuing to the demonstration on the grounds that it was necessary to prevent an imminent breach of the peace. However, the court found that detaining the protestors in the coach and forcing them back to London, was a disproportionate interference with the protestors' right to liberty.[11]

In Scottish Law, Breach of the Peace can be even more broadly applied. Conduct is criminal in Scotland if it is genuinely alarming or distressing to a reasonable person. Three activists have recently been convicted (without penalty) in Scotland having been charged with breach of the peace. The protestors (collectively known as the 'Superglue Three') glued themselves to the entrance of a branch of the Royal Bank of Scotland in protest at the Bank's investment in the Tar Sands of Alberta. Customers were not prevented from entering the bank, although had to enter through a human archway, and the three protagonists were accompanied by a chorus of protestors singing pop tunes with lyrics about the Bank's activities.[12]

2.2 'Legislation Creep' Commonly Used Against Protestors

The majority of laws impacting on campaigners' rights aren't directly designed for public order. Rather they were designed for alternative purposes. Yet 'legislation creep' has resulted in a number of these laws being misused in seeking to curtail the rights of protestors.

Stop and Search

A common example of this is the use of stop and search powers, notably those under Section 44 of the Terrorism Act, Section 60 of the Criminal Justice and Public Order Act, and Section 1 of the Police and Criminal Evidence Act (PACE). Section 44 of the Terrorism Act has met with the greatest level of criticism as it enables police to use stop and search powers without any reasonable suspicion.

According to *Liberty*: "if you're Black or Asian, you are between five and seven times more likely to be stopped under Section 44 than if you're White. Yet of the many thousands of people stopped under this power, no-one has been subsequently convicted of a terrorism offence"[13]. In 2010, the European Court of Human Rights (ECHR) in Strasbourg found that police use of these powers against protestors was illegal. The case involved two protestors, Kevin Gillan and Penny Quinton, who were searched whilst going to an arms fair protest. The ECHR concluded that their rights to privacy had been violated and that Section 44 did not have sufficient safeguards in place to prevent misuse.[14] As a result, the Government announced an end to the use of Section 44 in cases without reasonable suspicion, and more recently plan to scrap the powers altogether through the Freedom Bill.

The end of Section 44 is certainly a positive step in favour of regaining civil liberties. However, the Government has failed to address the numerous stop and search powers that have been more frequently used against protestors. Section 1 of PACE, for example, allows for stop and search of an individual if police have a 'reasonable suspicion'

that a person is carrying stolen or prohibited goods.[15]

Section 60 of the Criminal Justice and Public Order Act allows for indiscriminate searching in a given locality if a senior police officer has 'reasonable belief' that there may be incidents involving serious violence or that people are carrying dangerous instruments or offensive weapons in the area without good reason. Once authorisation is given, police can search without reasonable suspicion, and can subsequently seize any items that could theoretically be used as weapons or to conceal identity.[16]

At Kingsnorth Climate Camp in 2008 searches led to delays of up to two hours, leading protestors to believe that police were intentionally disrupting the planned activities of the camp.[17] A large number of items were confiscated, however the majority of these could barely be deemed under 'reasonable suspicion' to be dangerous instruments or offensive weapons. Amongst the items seized was a yellow highlighter, chalk, a board game, a walking stick and a clown outfit.[18]

Section 60 and Section 1 (PACE) stop and search powers do not authorise police to take names and details of those being searched; however, campaigners believe that these are deliberately misused as an opportunity to gather intelligence on protestors by searching wallets for names and identification.[19]

As well as searching protestors in public spaces, house raids are becoming increasingly common. FIT Watch recently reported that known addresses were targeted in London and Edinburgh on the respective Royal Weddings. Pre-emptive arrests were made, and residents were prevented from leaving their houses without having their details taken by the police.[20]

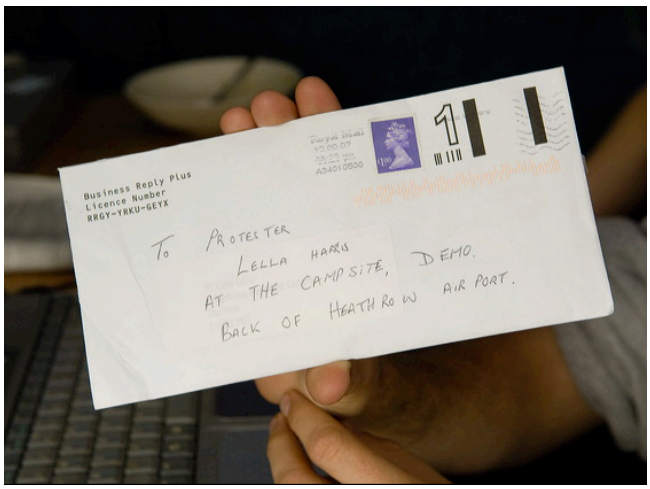
One father filmed police as they searched his son's bedroom following his involvement in the action to hijack a coal train at Drax power station in 2008.[21] The police confiscated copies of the *New Statesman* as an example of his political views, and all correspondence "of a political nature", although failed to include a letter from his MP within that qualification.

As well as the inconvenience and disruption of having personal items taken for considerable lengths of time, house raids of this kind can be intimidating, particularly for young people. Items including mobile phones and laptops are regularly seized This intelligence is all winding its way into lengthy criminal databases detailing everything from an activist's clothes to their photographs, despite in many cases not having committed any criminal offence.

Photography of the police

Police forces commonly use 'forward intelligence teams' to record the identities and actions of protestors. By contrast, section 76 of the Counter Terrorism Act in 2008 makes it an offence for members of the public to photograph police or official sites. Furthermore, Section 58 of the 2000 Terrorism Act makes it an offence to gather "information of a kind likely to be useful to a person committing or preparing an act of terrorism."[22] This is an offence even if there is no intention to pass that information on to terrorists. Although designed to prevent terrorists obtaining vital information, police have been known to confiscate cameras from tourists, artists and campaigners. For example, two women were arrested in 2009 for filming police who were failing to display their badge number.[23] Preventing photography restricts the ability of protestors to gather their own vital evidence of police behaviour. The footage of police actions in the G20 protests was vital to uncovering the truth about Ian Tomlinson's 'unlawful' killing.

Although use of this power has been relaxed in recent years, it still shows the imbalance between public order and protest. It also demonstrates a lack of proportionality and common sense in the approach to policing protest, as in the absurd case of G20 protestors dressed as comedy policemen being charged for impersonating the police, despite later finding out that there were a number of undercover police officers impersonating protestors during the same demonstration!



Pre-charge bail

Our justice system is underpinned by the principle of *habeas corpus*, or innocent until proven guilty, as it is more commonly known. However, one worrying development that undermines this principle is the use of pre-charge bail conditions, which can put restrictions on a potentially innocent person without even having to charge them.

Conditions on post-charge bail have been in place since the 1994 Criminal Justice and Public Order Act. In 2003, the power to impose conditions was extended to pre-charge bail – in those cases where there was deemed to be sufficient evidence to charge an individual but where waiting to collect that evidence would lead to a delay in laying the charge. In 2006, the Police and Justice Act extended this power to *all* cases where a person is bailed before charges are brought - even if there is insufficient evidence at the time to charge them.[24]

Astonishingly, there are no limits in the legislation on the length of time for which bail conditions can be imposed, or on the content of the conditions. Furthermore, the only formal procedure required is a police officer deciding that they are necessary. The conditions can go on indefinitely until the individual has been able to overturn the ruling, therefore putting the onus on them to put forward a defence.

Grassroots environmental campaigners believe that pre-charge bail conditions are routinely used to prevent protest activity from taking place. Many refer to them as 'meta-kettling' as they restrict the movements of large groups of campaigners at a national level, often disabling their ability to participate in further protests.[25] Protestors have been known to be restricted from entering parts of the country including territories as broad as Oxfordshire and Scotland. Those involved are often instructed that they are not allowed to talk to certain friends or their partners. These conditions make protest all but impossible, although to avoid ambiguity, bail conditions have been as blatant as to state that the defendant cannot attend any protest.[26] Understandably, these restrictions are incredibly difficult to adhere to and as such they are easily broken with further punitive measures enforced.

In April 2009, four women glued themselves to a statue in the Houses of Parliament. Although no criminal damage was caused, the 'Climate Rush' protestors were arrested and were given pre-charge bail conditions preventing them from entering the vicinity of Parliament, or talking to one another.[27] In the Ratcliffe-on-Soar case, the 114 individuals involved were given pre-charge bail conditions before they had even committed any offence.

This points to an abuse of a law which originally

came into being to prevent further criminal activity, not to restrict the rights of peaceful citizens to engage in protest.

This issue has received much recent attention due to new emergency legislation on bail. A recent ruling by Salford Magistrates (and later the High Court) found that the period of bail must include the 96-hour window police now have to question suspects before charging them. The 96 hours cannot, as previously thought, be spread out over time, and a suspect can only be called back in for questioning if new evidence is brought forward.[28] This ruling led to much confusion within the criminal justice system as it ultimately puts into question years of standard practice in the police force. As a result, the Government has acted swiftly to overturn this ruling through new legislation.

However, many commentators believe that that misses a vital opportunity to debate the frequent police misuse of bail, particularly in relation to protest. Writing in the Observer a number of leading solicitors and campaigners argue that,

"It is uncommon for people arrested at protests to be charged at the time. Instead the police routinely place people on police bail, often without even interviewing them. Then they remain on bail for many months and the police impose stringent bail conditions, the most common of which is a prohibition on attending further protests. Ultimately, many will never be charged. It is clear to us that the police view the use of bail as part of a wider public order strategy aimed at disrupting protest movements. We therefore welcome the high court ruling ending this practice."[29]

Harassment and Injunctions

Another tactic commonly used to pre-emptively prevent protest is injunctions. The 1997 Protection from Harassment Act (PHA) enables individuals or organisations to place injunctions on someone or some group if they are deemed to be causing alarm or distress. Further, Section 1A of 2005 SOCPA extends this to include isolated incidents, provided it involves harassment of two or more persons. An injunction of this kind is a civil action, but breach of the injunction is a criminal offence. This was originally designed to protect people from sexual harassment from stalkers, but began to be routinely used against animal rights protestors on the grounds that they were intimidating employees of pharmaceutical companies involved in animal testing. More recently, these are being used against environmental groups.

Companies and other organisations can gain police assistance with arresting protesters even on one-off protests, and because the PHA protects people from harassment in the vicinity of the home there have been cases where protest is prevented at a company's offices or buildings because employees live near to the workplace.

In 2008, *RWEnpower* successfully applied for an injunction under the PHA to prevent a group of villagers from Radley Lakes from entering the local nature spot where the energy company was dumping their waste. The campaign against the destruction of the lake was said by *RWEnpower* to be led by "environmental extremists", yet the residents at the forefront of the action included a 70-year-old retired university lecturer and the local vicar. By breaching the conditions, to enter or protest on the site, they could have been jailed for up to five years.[30]

Whilst important to protect the safety of victims of harassment, it is clear that the law is routinely being misused for actions other than its intended purpose. One of the solicitors who boasts involvement in drafting the law, and obtaining injunctions on behalf of several corporate clients, believes that the penalties obtained under the PHA are far weightier than those which would be

handed out under civil disobedience offences. Timothy Lawson-Cruttenden claims that, "Thus deterrence and the criminalisation of civil disobedience actions are the *raisons d'etre* for obtaining orders under the Act."[31] Cruttenden goes on to say that "NPower's use of the Order represents the development of this field of law to counter any excesses perpetrated by environmental activists. It is likely that other companies will follow npower's suit, thereby further developing this novel but effective area of law."[32]

Anti-social behaviour

Anti-social behaviour orders (ASBOs) can ban individuals from specific activities or from entering particular areas. It is a favoured weapon to threaten protestors with, as breaching the order is a criminal offence. In 2006, the Crown Prosecution Service aimed to place an injunction on Plane Stupid activists, which they described as "highly organised extremists".[33] ASBOs are imposed if a magistrate believes that the individual has behaved in a manner that caused or was likely to cause harassment, alarm or distress. In the case above, the court found in favour of the activists and refused the ASBO.

Another way in which ASBOs are routinely misused in the context of policing protest is by gaining information about people's names and addresses. It is a criminal offence to refrain from giving this information if a police officer suspects you of anti-social behaviour. Campaigners believe police use this as a threat to gain intelligence about protestors, who initially refuse to provide that information based on their rights under stop and search powers.

Although the Coalition Government now plans to make changes to ASBOs, these changes do not protect the rights of individuals to protect their identity in peaceful protest. This needs to be made clear to prevent further abuse. The Government also plans to roll out the use of Gang Injunctions. These injunctions can be served by local authorities for violence or threat of violence by gangs that consist of a) at least 3 people; b) uses a name, emblem or colour or has any other characteristic that enables its members to be identified by others as a group; and c) is associated with a particular place.[34] As with ASBOs, these forms of injunctions are loosely defined and have the potential to be used to both threaten and to charge protestors.

3. Domestic Extremism and the Role of the Police

3.1 Domestic Extremism

New and misused legislation, although significant, is only part of the problem in relation to the right to protest. The police have a duty to balance both public order law and the right to protest. However, in recent years policing strategy and tactics have become increasingly disruptive to environmental campaigning. This is part of a national strategy to target these groups as 'domestic extremists'.

The non-legal working definition of domestic extremism refers to individuals or groups who "commit criminal activities in furtherance of a campaign…to prevent something from happening or to change legislation or domestic policy, but attempt to do so outside of the normal democratic process"[35], using tactics such as trespass, damage to property or disruption of lawful business. Originally the term was used to refer almost exclusively to animal rights groups. However, in recent years with the decline of these groups, environmentalists have become an increasing target. The justification for rising concerns about potential 'environmental extremists' and for drawing an analogy with 'animal rights extremists' is entirely spurious.

Both of us would unhesitatingly argue that animal welfare constitutes an important part of the broader sustainable development agenda – on the self-evident grounds that any approach to 'sustainable food and farming' that does not put animal welfare concerns at the same level as public health, land use, agronomic and climate change concerns, is going to be an entirely defective approach. By extension, this means that being prepared to stand up for the rights of other creatures is an essential and intrinsic part of the advocacy involved in seeking a more sustainable world.

But the cause of 'animal rights' is one of the most vexatiously polarised causes in modern politics. The tactics espoused by the extreme outliers identified with that cause (involving violence not just to property but to people, up to and including death threats) are entirely abhorrent. Actions taken by the police and the criminal justice system to deter and prosecute those abhorrent tactics are therefore entirely justified.

That is the view of the vast majority of environmentalists today, including the vast majority of those involved in non-violent direct action

campaigning. Whilst there is indeed a limited record of environmental direct action that has included damage to property, there is no such record involving the threat of, let alone the reality of, violence to people.

It is significant that the closest environmental campaigners have come to threatening human life can be seen in the actions of organisations like 'Earth First' back in the 70s and 80s - for example, in 'spiking' trees in old-growth forests so that they couldn't be processed by timber mills.

The extended analogy between animal rights extremists and environmental campaigners is therefore preposterous – and a transparently dishonest way of justifying the unjustifiably repressive measures to 'control' environmental protestors.

When you hear the term 'domestic extremists', all sorts of radical and violent connotations spring to mind. We are a society that has grown to fear the words 'extreme' and 'terror'. However, the reality could not be more different. Meet many of the environmental activists that have earned this title and you will find articulate, welcoming and peaceful individuals who are passionate about raising awareness of man-made climate change and other environmental concerns.

As with all movements, there are always exceptions; but the vast majority of campaigners are law-abiding, peaceful and non-violent. "Vegetarians who like to ride bicycles", as one journalist put it.[36] From the numerous Climate Camps that have taken place since 2006, not one person has been convicted of a violent criminal offence.[37] So why the label? More importantly, why are millions of pounds of public money being spent on spying on and targeting this seemingly harmless group of people?

3.2 Association of Chief Police Officers (ACPO)

The answer lies somewhere along the corridors of the *Association of Chief Police Officers* (ACPO). ACPO comprises of over 300 senior police officers who coordinate the strategic direction of policing in the UK. They give advice and commentary on policing issues and perform some operational roles. Until very recently, part of ACPO's remit has involved setting the strategic direction on policing of domestic extremism, with three organisations set up to tackle this issue.

The *National Public Order Intelligence Unit* (NPOIU) has the role to "gather, assess, analyse, and disseminate intelligence and information relating to criminal activities in the United Kingdom where there is a threat of crime or to public order which arises from domestic extremism or protest activity".[38] The *National Extremism Tactical Coordination Unit* (NETCU) helps police forces, companies, universities and other bodies that are on the receiving end of protest by giving security advice and information to "minimise disruption and keep their employees safe".[39] The *National Domestic Extremism Team* consists of detectives who help police forces throughout the UK when policing protests.

As we've seen, there is no legal basis for the term 'domestic extremist'. Yet ACPO has three dedicated bodies, and a significant amount of power which it has used very effectively to disrupt the activities of environmental groups. Despite being funded primarily by the Home Office, ACPO is an unaccountable private company and therefore not subject to the normal vetting and transparency of public bodies. For example, ACPO is not subject to Freedom of Information requests. This lack of accountability has been subject to significant criticism, most notably by the HMIC Police Report

in 2009 which called for a review of ACPO's arrangements. Following the exposure of Mark Kennedy (a NPOIU officer exposed for his long-term undercover operation spying on environmental groups), the Coalition Government has now undertaken to bring the three domestic extremism units within the direct control of the Metropolitan Police. This is welcome news, and the transition has already begun. As yet, however, these new arrangements are not made binding in any of the Bills placed before Parliament. Furthermore, the lack of accountability is just one of the many issues that have to be addressed in this regard.

There seems to be little in the way of evidence to justify the remit of these units in relation to environmental groups. George Monbiot argues that there is no "single proven instance of a planned attempt in the UK to harm people in the cause of defending the environment."[40] However, the threat of what is called 'eco-terrorism' justifies most of ACPO's £2 million annual domestic extremism budget.[41] The most neutral commentators cannot but fail to point out the disproportionate and wasteful expenditure that this demonstrates. £2 million would go a long way in the many cash-strapped sustainable development and environmental departments of councils around the country.

Environmentalists argue that this is more than bad budgeting, and that ACPO's units have deliberately exaggerated the threat of environmental groups in order to justify their budgets and their very existence, now that the threat of animal rights groups has so markedly diminished. Furthermore, it appears that environmentalists are now caught up in a broader set of decisions to spy on the left here in the UK. Recent evidence taken from the Court of Appeal relating to the Ratcliffe-on-Soar trial shows that the NPOIU has for some years been conducting something called 'Operation Pegasus', with the remit to 'infiltrate extreme left-wing groups in the United Kingdom'.[42] Although little is yet known about this operation, The Guardian journalists Paul Lewis and Rob Evans are currently appealing for more information.

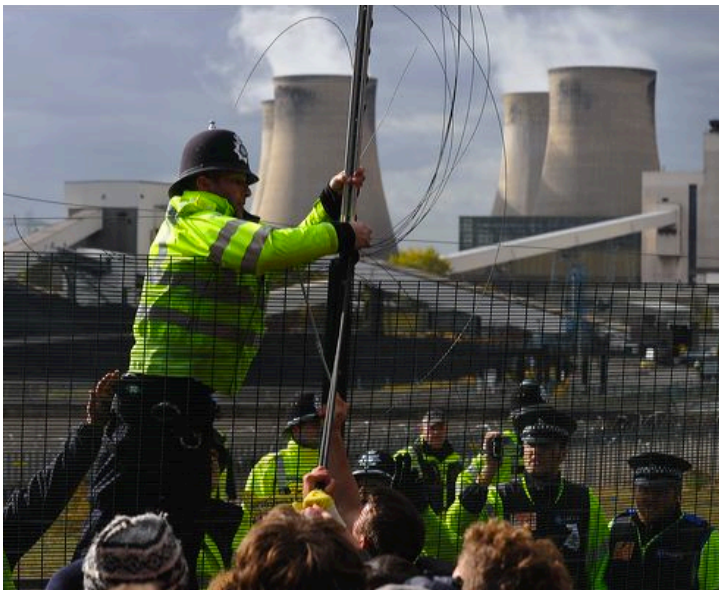
There are many instances demonstrating how the police deliberately exaggerate the threat of environmental protestors. At the Kingsnorth Climate Camp in 2008, the police report concluded that over 70 police officers had been hurt during the protest. However, it was later discovered that the medical unit had dealt mostly with toothache, diarrhoea, cut fingers and "possible bee stings".[43] A Home Office Minister later apologised in Parliament for misleading the public into believing that these injuries were as a direct result of the actions of protestors.

As well as the covert surveillance techniques, Forward Intelligence Teams (FITs) are controversially used to film and photograph protestors who are then placed on many of the databases held by the NPOIU. These are then used for a variety of purposes, including the use of spotter cards at protests, where photographs of key activists are put on a card for special police attention, despite many of these not having a criminal record. Controversially, the NPOIU also obtains and pays for information from private detectives.

Police often use stop and searches, or the power of arrest as a mechanism to obtain people's identity for these databases. This is an issue in the Fortnum and Mason case, whereby 150 members of the UK Uncut group have had their details taken following arrest. This is consistent with the overarching goal of the police, as set out in the National Intelligence Model.[44]

If the Coalition Government is serious about civil liberties and rights to protest, then these bodies need more than a new home. There needs to be a

fundamental review of their remit and the legal foundations on which that remit is based. Part of this shake-up should include a full judge-led inquiry into the use of surveillance, including both covert policing and forward intelligence teams.



3.3 The Case of the Undercover Cop

In the early hours of April 13th 2009, 114 environmental campaigners were arrested, on the premises of the school they were staying at in Nottingham. They were arrested for "conspiracy to commit aggravated trespass",[45] as it was alleged that they had planned to break in to the nearby Ratcliffe-on-Soar power station. As we've seen, aggravated trespass refers to trespass which is designed to result in intimidation or disruption.

This arrest has been roundly condemned by lawyers and protest groups for a number of reasons. First, they were arrested for the *intention* to commit a crime, and not for the crime itself. Second, many of those arrested were prevented from further campaigning action through being placed on pre-charge bail conditions. Third, there seemed to be no transparent process regarding the selection of the 26 individuals who were finally charged.[46] Twenty of those were found guilty, as the jury found against their principal defence of 'necessity' to protect human life. The defendants claimed (as protestors in the Kingsnorth power station trial had successfully done previously) that the trespass was justified by preventing the harm caused by the emissions of CO_2, as well as the benefits of highlighting the dangers to the wider environment and to society of the expansion of coal-fired power stations in the UK. However, because the jury were denied vital evidence, including audiotapes of them talking about their intent on these grounds, the prosecution made a case that the action was for publicity and was therefore not justified.

The final six campaigners were not due to face trial until January 2011. Their case was different, under the defence that they had not decided whether they were going to join the planned action at the time of the arrest and were therefore not guilty of intent to commit aggravated trespass. However, on the morning of the trial, it collapsed as evidence began to emerge that a police officer named Mark Kennedy had been living undercover with the group of environmental protestors for over seven years.

Kennedy, who had been present under his alias at the Ratcliffe protest and had also been arrested, began to raise suspicions amongst his fellow campaigners after he chose a different defence lawyer to the rest of the group. Despite having been taken off the mission, he was continuing to live under his activist identity until his then girlfriend found his real passport and exposed him to the rest of the community. Kennedy was believed to have 'gone native' and had already given evidence to the police that would vindicate the six defendants, and was in discussion about appearing in their defence in court. As a result, it was clear that the prosecution had no case, and the trial collapsed.

Kennedy's infiltration of the protestors has been

criticised on many grounds. He is accused of acting as an 'agent provocateur' – no longer just 'one amongst many', but an integral driving force behind the demonstrations. Known as 'Flash' for his ability to produce cash at the drop of a hat, he regularly supplied campaigners with the means to coordinate and execute their protests. (Kennedy became so integral to life in the community that over 200 people turned up to celebrate his joint 40th birthday.[47]). In the Ratcliffe operation, not only had Kennedy supplied the camp with a van and assisted them in transporting equipment, he also encouraged the protestors to continue with the planned demonstration after initial fears of a strong police presence had prompted them to abandon it. Kennedy was tasked with a reconnaissance mission by his fellow campaigners, and reported back that there was no police presence at the site. The protest was back on, and the arrests followed soon after.

Kennedy has also been accused of becoming intimately involved with a number of the female environmental activists over the years, including engaging in a long-term relationship. Kennedy argues that they were encouraged to use these tactics in order to assimilate into the group, which has led some of the women involved to argue that they have been victims of state-sponsored sex abuse.

The Ratcliffe-on-Soar trial points to a number of violations of the European Convention on Human Rights (as outlined in Chapter 4). The violations include the right to privacy, the right to freedom of assembly and also the right to a fair trial. The latter relates both the entrapment of the protestors and the subsequent non-disclosure of evidence.

On top of these unethical tactics, the financial cost of an undercover operation of this kind has been estimated at over £250,000 a year. Kennedy also allegedly ran up an expenses bill of over £200,000.[48] In this instance, not only was the taxpayer indirectly paying for the action at Ratcliffe to go ahead, they were also directly funding an expensive operation to stop it.

If these figures are accurate, Kennedy's infiltration of the protest groups could have cost in the region of £2 million. Added to this, the cost of the pre-emptive arrest and the ensuing trial currently stands at £700,000.[49] What it achieved was the avoidance of one day of potential disruption to one energy company, and a handful of lenient community order sentences for the twenty convicted given that the Judge deemed 'each of you acted with the highest possible motives'[50]. That bill continues to rise as the group of twenty have now won an appeal, following the unusual support of the Director of Public Prosecutions, on the grounds of non-disclosure of vital evidence including audiotapes from Kennedy. Evidence is also now emerging that Kennedy's involvement in the earlier protest at Drax could have similarly affected the protestors' right to a fair trail. In short, this clearly represents a criminally irresponsible waste of police time and public money.

The exposure of Kennedy is not an isolated incident. Kennedy has highlighted the existence of a number of other covert operatives, including WPC Lynn Watson who, amongst other activities, lived undercover for some time with the protest group the 'Rebel Clown Army'. This group likes to dress up as garish clowns using peaceful tactics such as feather dusters to 'clean up' the buildings of army recruiters and MPs in order to highlight peace and environmental causes.[51]

However, the high profile cases of police officers like Kennedy and Watson are unfortunately bound to be just the tip of a very large iceberg, highlighting yet again, in the most alarming way, the systematic erosion of rights to protest on environmental grounds.

3.4 Police Tactics

Over and above the concerns about accountability and proportionality, as above, the tactics used by police during protests have also been called into question.

Police have an unenviable task of protecting both people and property whilst ensuring that rights to protest are upheld. This is by no means an easy feat, and the actions of the minority can often cause public sentiment to sway in favour of strong action against protestors. Under public order legislation, protestors must inform the authorities if an assembly or procession is likely to take place, including gaining prior permission on routes and details of actions. The bureaucracy involved in this can often prove cumbersome especially for campaigning organisations with no clear organisational structure.

Furthermore, because protestors often feel that the policing of protest can be planned for and executed with the expectation of violence, groups have become reluctant to engage, instead choosing to 'swoop' on undisclosed locations. The expectation of violence on both sides contributes significantly to the levels of tension during protests. Riot gear and barriers restrict communication between protestors and the police. Frustration easily builds up on both sides, and can often get out of control.

Kettling

There has been a particular public criticism surrounding the use of 'kettling'. The tactic is used to control the movement of large groups and entails physically containing demonstrators in a given space. The logic is to stop the spread of the protest and keep it within a manageable space to allow for safe crowd dispersal and isolating key suspects. However, as with its namesake, in reality

kettles can boil. Protests often become more heated after hours of containment, with protestors not being able to access food, shelter or toilet facilities, forcing them to urinate in the street and light fires for warmth. Communications are often strained and frustrations easily lead to aggressive behaviour and arrests. Campaigners believe there is no excuse for not providing access to these facilities when the police have often decided well in advance of the protest where the 'kettle' is going to take place. Police also restrict new entrants to a kettle, which can increase anger, and lead to splinter groups of campaigners around the vicinity of the protest

The way police conduct themselves whilst kettling has been widely condemned as breaching protestors' human rights. A recent judicial review into the G20 protests in April 2009 found that the kettling was "not lawful police operations".[52] The police are appealing this decision. However a number of other judicial reviews are following in its wake, many addressing the containment of minors during the student protests in November 2010.

Use of force

In addition to the use of kettling, the G20 protests provide further examples of poor policing. The assumption of confrontation was there at the start. Businesses were warned in advance, and many closed for the day and boarded up their windows

along the proposed sites of protest. At the Bank of England, police kettled protestors against their will. The police mission was to swiftly break up the protest with 84,000 hours of police time dedicated to it. However, complications arose when Ian Tomlinson, a newspaper seller, died whilst being caught up in the protests. Tomlinson, 47, was struck with a baton and pushed to the ground by PC Simon Harwood, a member of the Met's Territorial Support Group (TSG).[53]

Originally, the Crown Prosecution Service (CPS) decided not to prosecute the officer, in part due to complications surrounding the post-mortem. However, following the results of an inquest into the death, and the verdict of unlawful killing, Harwood is now facing charges of manslaughter. Police were criticised for their confrontational approach to policing the protests and failing to engage with campaigners to facilitate a more peaceful approach.

Interestingly, this came at a similar time to the policing of the Tamil protests against the Sri Lankan Government in Westminster. Despite limited communications between the police and protesters, the police used limited force and the protests continued peacefully for over 70 days until the campaign slowly wound down. Although the actions of the protestors were similar, the actions of the police couldn't be further apart. These examples point to the failure of police to fulfil their role of facilitating peaceful protest.

In 2009, Climate Camp activists produced a booklet outlining the tactics deployed by the police at the Kingsnorth Climate Camp. The tactics included in the report included the use of 'sleep deprivation' as police played loud music to prevent residents of the camp from sleeping through the night.[54]

Previous revelations about police behaviour included police offering financial incentives for information on activist behaviour. In 2005, Plane Stupid protestors accused police in Scotland of offering to come to arrangements in response for intelligence.[55]

3.5 Big Brother, Big Business

The rise of our surveillance culture is not confined to the State alone. Large companies have used a number of tactics, both covert and overt, to gather intelligence about campaigning groups, in order to issue injunctions prior to or during protest. Following the expose of Mark Kennedy, it became apparent that green groups were also being routinely infiltrated by private surveillance companies. Indeed, the Guardian revealed that police chiefs "privately claim that there are more corporate spies in protest groups than undercover police officers."[56] E.ON, Scottish Resources Group and Scottish Power are amongst companies on the books of a private security firm. Rebecca Todd, the owner of the company, was unveiled when she accidently sent emails about the groups she has been infiltrating to the members themselves, rather than to the company executives, who were the intended recipients.

ACPO's chief, Hugh Orde, has expressed concern about unregulated private sector spies. Cynically, one might however point out that ACPO has a selfish motive given that NETCU appears to have been working closely with businesses to assist them in serving injunctions on demonstrators.

The cosy relationship between government, big business and the police was exposed in a Freedom of Information (FOI) Request (made by the Liberal Democrats in opposition) which surfaced a number of emails between the police, the Department for Business and E.ON about activists' campaigning strategies.[57]

Companies certainly do not lack ambition when requesting injunctions. In the run up to the 2007

Climate Camp at Heathrow Airport, BAA attempted to serve an injunction against everyone associated with the Camp. This included all members of the National Trust, Friends of the Earth and other mainstream NGOs.

The growing media concern about the use of super-injunctions to silence the press is also directly relevant to the area of corporate environmental behaviour. In October 2009, the oil trader Trafigura attempted to gain a super-injunction against the Guardian to prevent it from publishing details about a report that stated that the firm had deliberately dumped potentially toxic waste in West Africa. The firm's lawyers not only prevented the publication of the report, but sought to place restrictions on the Guardian from even talking about the injunction itself.

Legislation also exists to protect specific corporate interests. SOCPA introduced two new offences intended to protect animal research organisations from the actions of campaigners and protesters, including interfering with the contractual relationships and intimidation of persons connected with the organisation. As Liberty argues, this is cause for concern, and sets a dangerous precedent as it singles out a particular class of 'victim' as deserving special protection, as well as a particular class of protestor.[58] The organisations covered by this amendment can be extended by the Home Secretary without Parliamentary debate.

When big business can't directly stop protest through the law, they can use the law to intimidate activists into staying away. Cairn Energy has recently filed papers which would have the effect of fining Greenpeace almost £2 million a day if it continues to disrupt activities on its Greenland offshore rig.[59] 18 Greenpeace activists have breached the rig's exclusion zone in protest of the company's refusal to explain how it will mitigate the risks of a potential disaster. If Cairn Energy is successful in this tactic, then they would bankrupt the NGO. This isn't the first time that a corporation has tried to fine an NGO for disrupting its activity. In 1997, Greenpeace was sued by BP for $2.3m as a result of activists entering an oil platform.[60] BP eventually dropped the case due to bad publicity.

This added dimension of wealthy companies prepared to throw money and resources at a legal system that already favours them shifts the balance overwhelmingly against low-budget activist groups.

4. Why does this matter?

Many of us neither participate in nor care about protest and direct action campaigning. We may therefore assume that the erosion of civil liberties outlined above does not affect us. That is a dangerous delusion. As David Blunkett argued in 2009, we cannot afford to let the intolerable become the tolerable. But in many instances, in relation to protest, this has already happened. Furthermore, the issues on which these environmental groups are campaigning will undoubtedly impact on all of us in some way or another. Their actions are an essential part of the overall effort being made by civil society to ensure that this Government continues to raise the bar on action to prevent climate change and protect our natural environment.

4. 1 Positive Rights to Protest

The examples, in the chapters above, demonstrate the systematic use of new and old legislation in order to restrict legitimate peaceful protest. This is in stark contrast with what should be happening with respect to the freedom to protest. The European Convention on Human Rights sets out, for the first time, positive rights related to protest. Rights to protest have historically been negative; in other words, you are free to do anything "subject only to the provisions of the law."[61] (The 1986 Public Order Act, for instance, states that processions and assemblies could take place as long as they do not result in serious public disorder, damage to property or the disruption of the community). However, following the UK ratification of the 1953 European Convention on Human Rights, as part of the 1998 Human Rights Act, things changed. The European Convention relates to political protest in the following areas:

- **Right to Peaceful Assembly – Article 11**

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

- **Right to Freedom of Expression - Article 10**

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

- **Right to Freedom of Thought, Conscience and Religion – Article 9**

Everyone has the right to freedom of thought, conscience and religion; this right includes

freedom to change one's religion or belief, and freedom, either alone or in community with others and in public or private, to manifest one's religion or belief, in worship, teaching, practice and observance

• **Right to Respect for Private and Family Life – Article 8**
Everyone has the right to respect for one's private and family life, home and correspondence.

Essentially, the Convention enables protestors to argue for their positive rights to demonstrate and prevents public bodies from stopping them practising this right - with the qualification that police can interfere "*only to such limitations as are prescribed by law and are necessary in a democratic society".*[62] In many ways, the outcome is still the same: protest has to take place within the public order laws outlined above, but these new powers do give protestors additional weight to defend their actions and to uphold their right to protest. The police must not restrict peaceful protest unless it is necessary to uphold public order as outlined above, but they also have a positive duty to safeguard the rights to peaceful assembly, and are required to show a certain degree of tolerance towards peaceful non-violent gatherings, even if this results in some level of disruption.

The Home Affairs Committee report on the G20 protests reaffirmed this position:

"The police must constantly remember that those who protest on Britain's streets are not criminals but citizens motivated by moral principles, exercising their democratic rights. The police's doctrine must remain focused on allowing this protest to happen peacefully. Any action which may be viewed by the general public as the police criminalising protest on the streets must be avoided at all costs."[63]

However, although the Convention should have made any acts of protest more defensible, the counter-legislation, outlined in Section Two above, has made it harder. The Convention should have ensured that police actively facilitate peaceful protest. In practice they have done much to prevent it. The legislative pendulum has swung strongly in favour of public order. Changes to the law have made it possible to make non-violent protest criminal, as well as turning civil torts such as trespass into criminal offences. It has turned peaceful campaigners into criminals, such as the local and often elderly campaigners at Radley Lakes. It has also made it possible for the police to intervene pre-emptively in protest actions and prevent demonstrations from happening. Taken together, these changes are not consistent with the EU Convention on Human Rights as they relate to the rights to protest.

The Convention is a powerful tool in defence proceedings in relation to protest and has been successful in a number of high profile cases, notably leading to the end of Section 44 stop and search powers. Worryingly, however there are noises from the Conservative right about repealing the Human Rights Act and exempting the UK from parts of the European Convention in favour of a new UK Bill of Rights. Should this gain any momentum it would be a massive step backwards for rights to protest, and would undermine any reputation to Coalition is aiming to achieve on civil liberties.

It is not just Parliamentarians and legislation challenging the rights in the European Convention. A recent study by HMIC showed that the majority of the public has limited tolerance for protests.[64] The police would appear to have factored that majority view into their own interpretation of the right to peaceful protest. They have no compunction in exaggerating the threat posed by the protestors, and their comments often give rise

to use of hyperbole in media reports insinuating violence by protestors, as happened at Kingsnorth. This is then held up as additional justification for the use of oppressive, heavy-handed policing tactics.

Even if you don't sympathise with the causes of these protestors, the blatant erosion of their liberties is alarming. The rights to protest are a fundamental part of a healthy democracy, and it should concern us all that our ability to voice dissent, whatever the issue, is at risk. After all, many of the great social changes which we now hold so dear are in large part attributable to the acts of civil disobedience from groups such as the suffragettes and the civil rights movement.

Many environmental groups feel that they have an equally valid cause. With climate change undeniably one of the biggest threats facing the world today, they see it as their duty to urge decision-makers into more effective action. Like the suffragettes and civil rights groups before them, many are prepared to go to great lengths for this cause. Ironically, unlike many of the deliberately criminal activities that these forerunners adopted, climate protestors overwhelmingly want to operate within the law. They employ legal observers to attend protests. They know their rights, and seek to operate within them. But despite this predominantly law-abiding approach, the bar of what is acceptable within the law is being steadily raised to prevent even the most benign of activities. The balance has swung in favour of order over protest. As one campaigner argues "you need to push back just to stay where you are".[65]

We also need to look at the profound implications that this systematic politicisation of policing is having on the wider environmental agenda. Why is it that the Government and the police seem to be acting on the side of big business and polluting activities when it comes to protest? What will the impact of this be when decisions are increasingly made at the local level? And what will be the effect of systematically criminalising activists on more moderate environmental supporters, let alone those who have yet to be persuaded that living sustainably is the way forward?

4.2 I Will if You Will

The Government's principal defence to the charge that it is not doing enough on climate change or other environmental issues is to blame this lack of action on the public's reluctance to accept change. Ministers are reluctant to make bold moves for fear of riling their voting base. This is demonstrated by Vince Cable's recent attempt to block the Committee on Climate Change's recommendations for the 4th Carbon Budget. Cable, concerned about the impact on growth and industry, argued against the proposed 50% cut by 2027 despite a broad consensus on the economic benefits of pursuing the low-carbon economy.

Another example can be seen in the bizarre attempt to end a non-existent 'war on the motorist' by Tory ministers, in order to appeal to voters unwilling to accept the reality of global rises in fuel prices. Yet, at the same time, aware of the need to change public opinion, the Department for Energy and Climate Change and Defra has pumped money into a number of behaviour change and education campaigns.

Although these behaviour change initiatives have been broadly well-received, they are in danger of being undermined by the mixed messages sent out by the Government. Modest steps in the right direction are routinely being cancelled out by contradictory leaps back towards unsustainability. There are many examples of this kind of inconsistency across government (a number of which are included in Friends of the Earth's recent

review into "The Greenest Government Ever: One Year On"). [66]

- On the one hand, highlighting the need to tackle the environmental determinants of poor public health, whilst at the same time removing the mechanisms in place to drive reductions in NHS-related carbon emissions.
- Removing the flagship Sustainable Schools programme whilst at the same time recognising that we need to equip future generations with the skills to drive green economic growth.

Not only does this negate any benefits generated from the positive environmental approach, it also sends a mixed message to the public, and ultimately discourages pro-environmental behaviour rather than encourages it. If individuals or businesses feel that their action is futile, they will stop doing it.

This inconsistency is no more starkly demonstrated than in the area of environmental campaigning. On one side of Whitehall, we have had DECC paying £10 million a year to encourage us to 'Act on CO_2'[67] and a raft of measures to build a responsible 'Big Society', and on the other we have the Home Office funding various initiatives to undermine the actions of protestors trying to mobilise public support for addressing climate change. At best, this is a huge waste of taxpayers' money; at worst, it points to a government that is not serious about being green at all.

Sustainable development is not just about ticking a green box here and ignoring what goes on everywhere else. It provides an interconnected framework that joins up policies to improve social wellbeing, economic prosperity and the protection of the natural environment. The Coalition Government has so far failed to put in place robust mechanisms to ensure that policies promote sustainability, let alone to promote effective governance systems, including a vital healthy

democracy where the freedom to protest is upheld as a basic right. Dissent, either for or against environmental action, must be part of this. This should surely be a priority when the Home Office comes to 'sustainability proof' its next departmental business plan.

4.3 My World, not The World

We must therefore pay close attention to the proposed changes in the working of our democracy and how these changes will impact on the right to protest**.** Both the idea of the Big Society and localism are fundamental to the Coalition Government's approach to strengthening our democracy, with the intention of transferring much more power and decision-making to the local level. There are many positives to be gained from greater accountability and autonomy in communities and local authorities.

However, this will inevitably pose new challenges

for campaigning on environmental issues. As communities gain a stronger voice, how can we ensure that everyone has an equal opportunity to put forward their concerns? There is little in the current plans to encourage the inclusion of third parties, to break down barriers created by wealth and privilege, to promote collaboration rather than competition between local organisations, or to prevent those that are already better off and more dominant from furthering their views at the expense of others.[68] 'Nimbyism' has long been a challenge for environmental policies such as wind farms and congestion charging, with those opposing projects able to shout louder than those in favour. This is particularly true in cases where those who stand to benefit, or be harmed, are not given a voice at all, either because they live outside a constituency, or because (in the case of climate change) they are future generations yet to be born.

One worrying element of the Big Society is the proposal to elect Police Commissioners through the Police Reform and Social Responsibility Bill. This paper has shown that policing has become political, and the changes proposed in the Bill threaten to entrench the political nature of policing and undermine its independence altogether. This could severely impact on rights to protest.

If the Big Society is to be fair and sustainable, it needs to be focused as much on the long-term as on the short-term. The problem is that most people will quite understandably favour the immediate (both in terms of time and local vicinity) over the distant. We are much more likely to be concerned about 'my world' in the here and now, about how to feed our family, or how to keep our streets safe and clean than about 'tomorrow's world', subject to vague threats about flooding or future food shortages.

However, these issues are not going to go away, and evidence is pointing to the ever-increasing impact they are likely to have on our immediate lives in the next few decades. Although we may feel far removed from these issues, they have very far-reaching impacts. There are many groups campaigning and raising awareness about such concerns, and it's crucial their rights to protest are protected even as the Coalition Government sets out to strengthen local democracy.

As well as promoting and restoring liberties at the national level, the Government must ensure that when passing power down to local councils, rights to protest are also passed down to local citizens. The proposed changes to the Regulation of Investigatory Powers Act (2000) outlined in the Freedom Bill should be welcomed. These will require local authorities to gain judicial approval before using measures such as CCTV to spy on residents for petty offences. However, more needs to done to ensure that at the local level, decision-makers and the police respect the rights of citizens to voice their dissent.

4.4 All in this Together

Much of the focus of this paper has been on the role of government and the police in ensuring that freedoms to protest are respected. However, there is also a role for the environmental community to take a much more active role in campaigning on rights to protest. This is not just an issue for activists. The continued framing of protest as illegal and violent can have the highly regrettable effect of preventing others from joining those protests, either through fear of getting caught up in violence or the fear of getting arrested or blacklisted on many of the police databases.

Worries about future job prospects can often act as a deterrent for many young people. This is not an irrational concern. First-time protestors are already being photographed and searched on a regular basis just for taking part in a march. As Tim Gee, an

experienced environmental campaigner, said, "The truth is that that up and down the country, citizens just dipping their toe in the water of democratic engagement are intimidated and discouraged by the petty enforcement of unjust laws."[69]

These concerns have recently been amplified by the leading legal aid firm, Hodge Jones & Allen. It has accused the Metropolitan Police of criminalizing a generation of students for taking part in the protests against tuition fees. It is doing this by handing out "an excessive number" of cautions for the offence of aggravated trespass – which results in a criminal record. Speaking on behalf of Hodge Jones & Allen, Ruth Hamann warned of the possible consequences:

> *"While aggravated trespass might not be the sort of offence that would automatically make a person ineligible for a job, it may encourage an employer to favour another candidate over the candidate with a caution. Our concern is that, by using these wide discretionary powers, the Met is criminalising a generation of political activists."*[70]

One protestor, a 17-year-old student from St Albans, was stopped and searched on his way to the protests in Westminster. Despite having nothing on him to arouse suspicion, and not taking part in any criminal activity during the protest, his identity was used by his local police force when visiting schools to discourage pupils from participating in future protests.[71] The role of the police in discouraging protest is questionable, to say the least; but to name someone associated with criminal activity on no basis whatsoever is abhorrent. It is easy to see how this persistent harassment could quite easily act as a deterrent to him and to others against any future involvement.

Further, the recent harsh sentencing of young activists Charlie Gilmour and Francis Fernie, for violent disorder, points to an even more alarming deterrent. Fernie, who has just finished his A-levels, threw two sticks during the UK Uncut protests at Fortnum and Mason. He pleaded guilty and asked for a lenient sentence as the action was out of character, and as a result of being under the influence of alcohol. Despite this, the judge imposed a 12-month sentence on the grounds that the day's long-lasting violence needed to be taken into account.[72] Gilmour, who was infamously caught hanging on the flag of the war cenotaph in Whitehall during the November student protests, was given 16 months.

Both men did commit a crime, but it is difficult not to compare their actions to those of many young men, under the influence of alcohol on a Friday night, who no doubt commit equally stupid acts for arguably less principled reasons. Several war veterans have come out against Gilmour's sentence. Although critical of his actions, they argue that they fought for freedom, and his punishment is not in keeping with this.[73]

Over the last few years, great strides have been made in mainstreaming environmental issues and broadening their reach. NGOs like Friends of the Earth and WWF have become increasingly focused on working with governments and business to accelerate the process of change, and newer organisations like 10:10, use celebrity endorsements and stunts to appeal to the non-converted. But labelling environmentalists as 'domestic extremists' does nothing to normalise pro-environmental behaviours – 'green' once again becomes associated with fringe and radical. The media were quick to jump on the radical splinter actions of anarchist protestors at the March anti-cuts rally, only to badge a non-violent and peaceful group of UK Uncut protestors as extremists. The press's actions demonized the protestors and have threatened the progress that UK Uncut was experiencing in engaging new audiences in creative and peaceful direct action.

It is widely recognised that we need NGOs both to provide workable and pragmatic solutions to these many challenges, and to offer a more challenging and urgent critique. 10:10 encourages us to reduce our flying; Plane Stupid uses direct action to target airlines and government; WWF asks us to think about 'One Planet Living'; Climate Camp shows us that coal-fired power stations operating on a 'business as usual' basis are jeopardizing prospects for a low-carbon future; Forum for the Future works with major companies to develop sustainability strategies, and Greenpeace exposes the malpractice of the some of the same companies in the public eye. 'Sticks and carrots' has been – and still is – the name of this particular game.

The right to protest is not just an issue for activists or for civil liberty organisations. It's a right that anyone interested in promoting sustainable behaviours should be concerned about. Whether it's businesses reliant on green consumers, the behaviour change experts in government, or the membership department at Friends of the Earth, we are indeed all in this together.

5. Time for Change

Nick Clegg claimed earlier this year that "this will be a government that is proud when British Citizens stand up against illegitimate advances of the state."[74]

This paper has shown that despite a strong pledge from the Coalition Government on civil liberties, there are still a large number of repressive measures in place that need to be rolled back. This paper is not intended to provide all the answers, but to start a debate between those in the environment community so that collective demands can be developed and campaigned on. The Protection of Freedoms Bill will not receive royal assent until early 2012, so there is still time to make it properly 'fit for purpose'.

5.1 A Greener Freedom Bill and Other Legislation

The Deputy Prime Minister has explicitly promised that the Government would "remove limits on the rights to peaceful protest."[75] We need to see a Freedom Bill that lives up to this promise. There are a number of positive signs in the Freedom Bill. The removal of anti-terror stop and search powers and the tightening up of RIPA will be two important developments. But on their own, they do not match the ambition set out both by the Liberal Democrats in opposition and by the Coalition Government in power. We have listed below some of the legislative and policy changes that could be adopted to ensure that this happens.

Stop and Search

The proposed removal of Section 44 'stop and search' powers is to be applauded, but this needs to go further with the assurance that stop and search powers under Section 1 of PACE and Section 60 of the Criminal Justice and Public Order Act are used proportionately in order to prevent violence in cases where there is a genuine breach of the peace. Liberty is recommending that Section 58 of the Terrorism Act (2000) should be removed to prevent indiscriminate searches for information, particularly in relation to journalists.[76]

Furthermore, these powers should only be used for their intended purpose, and should not be abused to gather intelligence about protestors. People have the right to withhold their name and address, and police officers should have a responsibility to inform the individual that they have this right to withhold their name. It should be illegal, without the permission of the individual concerned, for the officer to record their name where that information

has been revealed by documents or other means. Furthermore, it should not be permissible for police officers to use threats to cajole or encourage individuals to provide this information.

Aggravated Trespass

The Liberal Democrats pledged to remove the offence of aggravated trespass in opposition as part of the Freedom Bill. However, the draft laid out in front of Parliament contains no such commitment. This offence has the effect of criminalising protest, and is neither necessary nor proportionate. If the offence is removed, then trespass will revert to being covered under civil law, and any criminal act towards people or property, which arises as part of that trespass will be covered under the criminal powers that are already in place.

The unnecessary and illiberal nature of aggravated trespass has been highlighted by a number of organisations during the trials of protestors, including the high-profile Ratcliffe-on-Soar and Fortnum and Mason trials led by Bindmans Solicitors. We believe what's missing is a concerted effort to hold the Liberal Democrats to account on their pre-election promise to remove the power as part of the Freedom Bill.

Pre-Charge Bail

Pre-charge bail conditions are illiberal, contradict habeas corpus, and are used explicitly to discriminate against protestors. One solution is to repeal those amendments that enable the power of pre-charge bail to be used in *all* cases where a person is bailed before charges are brought - even where there is insufficient evidence to charge them - and revert instead to the 2003 amendment which gave the power to impose pre-charge bail conditions only in cases where there was sufficient evidence to charge an individual.

Following the recent debate on bail and subsequent emergency legislation there have been calls for a full and proper review into the misuse of bail conditions by police in relation to protestors. This work is being led by the Network for Police Monitoring, FIT watch and solicitors including Bindmans and Hodge Jones and Allen.

Injunctions

The absurdity of super-injunctions has recently received much attention globally. However, aside from the gagging orders of the super-rich, there are numerous cases where injunctions are used routinely by authorities and businesses to prevent peaceful protest without reasonable justification. These conditions often violate the European Convention on Human Rights, and legislative boundaries are needed to ensure that injunctions are not misused to silence legitimate protest.

We believe that any forthcoming parliamentary review into super-injunctions should also address the disproportionate use of injunctions relating to protest in the public interest.

Photography of Police

The Liberal Democrats also pledged to change the law regarding photography of police, arguing that this is an unnecessary and potentially repressive extension of police powers to prevent members of the public from gathering information.[1] This power is wholly unnecessary to prevent acts that are likely to lead to terrorism, as such acts are already clearly caught by Section 58 of the Terrorism Act 2000, which makes it an offence "to collect information likely to be useful to a terrorist".

Protest in the vicinity of Parliament

The Police Reform and Social Responsibility Bill (which aims to review restrictions to protest in the vicinity of Parliament under SOCPA) still places restrictions on assembly and encampment on Parliament Square Gardens. This is deliberately intended to prevent the long-standing peace camp

and recent Democracy Village. But restrictions could also prevent extended demonstrations outside the Houses of Parliament, and therefore, has the effect of banning protest in one of the most important sites for democracy in the UK.

One solution might be to stipulate a maximum length of time that protest could take place on the Square, with an option to appeal for further times where it is in the public interest. Alternatively Liberty proposes removing all restrictions, and instead include provision for the courts to prevent protest in cases where it will seriously disrupt public order, cause harm to public property or restrict the rights of others. This would prevent long-term encampments, or cases likely to cause serious disruption, but still allow people to use the site for legitimate demonstrations.

Anti-social behaviour

As we have seen, the proposals around Gang Injunctions are still open to interpretation and could easily be used to prohibit membership of activist groups. These proposals should include conditions on the use of these powers so that injunctions are only used where there is reasonable suspicion of violent criminal activity being performed by that gang. Explicit guidance should be produced to accompany all anti-social behaviour legislation to make it explicit that this should not include peaceful protest.

Quasi-public space

The charity '*Bond*' is working with *38degrees* and *Unison* on a campaign to highlight the issues of protest in quasi-public spaces. The campaign aims to gain a statutory exception to the law of trespass in quasi-public spaces, subject to a test of reasonableness, which would regulate the conduct of those who enter onto the land in order to express their opinion. The right involves two steps: (1) 'quasi-public land' is defined as all land which is dedicated to public use; (2) a 'reasonable access rule' is introduced under which private owners of quasi-public property may exclude people only on grounds which are objectively and communicably reasonable.

Bond argues that the proposed right fairly balances the rights of the landowner and the protestor, is administratively workable, and fits well with analogous rights. It is the smallest possible interference in the law of trespass, and grants those with an opinion to express a prima facie right to access someone else's land in order to air it. *Bond* works on behalf of international development NGOs, although the report is gaining support from a number of parties interested in rights to protest. *Unison* is currently leading efforts to table the amendment as part of the Freedom Bill.

Defence of necessity

Mike Schwarz, a solicitor who has defended a number of protest groups, argues that one can and should be able to argue, as part of one's defence in criminal proceedings, that one had a 'justification' defence for committing a particular act - for example, a feeling of obligation to try and prevent a crime.[77] Protection of the environment as a 'defence of necessity' has been successfully used in trials for environmental groups, including the 'Kingsnorth Six' Greenpeace protestors and GM campaigners.

However, until there is recognition of this 'justification' defence in legislation, the onus is on campaigners to continually put forward this case in the hope that a jury will find in their favour. Others working in environmental law are calling for a crime of 'ecocide' to be recognised so that individuals and organisations can be held to account for damage to the environment. Taken together, these two changes could create a powerful defence of necessity to prevent the crime of ecocide.

5.2 Policing

As well as legislative changes, it is clear that the current system of policing of protest is not fit for purpose. The police watchdog HMIC has highlighted this in two recent reports.

> "*It would be easy but thoroughly misleading to believe that the challenges of policing public protest could be resolved by somehow tightening up the law. No statute can ever deal neatly with the complex realities which arise when people are motivated to demonstrate their passion for a cause* in public."[78]

This requires better policing of protest, both in terms of the approach taken by the police and of the training of officers.

Kettling

We have shown above that there have been many instances where the kettling of protestors has been unlawful and inadequate. It is time to learn from these mistakes. Despite efforts by Katy Clark MP and others to ban the use of kettling through an Early Day Motion, it is clear from speaking to both protestors and police that simply banning kettling may not be a sufficient response. In their 'Adapting to Protest' report, HMIC recommended that ACPO, the Home Office and the National Policing Improvement Agency (NPIA) should "agree an overarching set of principles on the use of force by police that cover all circumstances and all fields of policing."[79] This recommendation has yet to be put in place.

However, in keeping with the spirit of the Big Society, we suggest that these principles should be co-designed with those on the receiving end of public order policing. The policing of the Climate Camp in Blackheath in 2009 shows exactly how policing of protest can work to the benefit of both police and protestors if the right communication and coordination occurs. The campaigners were given the freedom to participate in the camp, with the police staying at arm's length. As a result there was no subsequent disorder or disruption to the public.

This code of conduct should cover issues such as advance notification and communication between protestors and the police during the protest itself. It is clear that kettles need an effective dispersal strategy to allow for freer movement, as well as access to food and sanitation. Further antagonistic behaviour such as photography of all participants should be avoided, whilst ensuring that police and protestors work more collaboratively to stop violence when it occurs.

Police complaints

The current system of complaints against the police is ineffective in relation to protest. The Independent Police Complaints Commission (IPCC) has been accused of being too biased towards police interests. For example, the IPCC attempted to serve an injunction against Channel Four for showing the video footage of the G20 protests. This was widely condemned.

The complaints procedure also prioritises specific instances of police misconduct rather than the ability to voice concern over systemic policing issues. For example, if you are able to identify one police officer that used disproportionate force, then it is possible to complain. But it is harder to argue about the general use of tactics by a police force in managing any protest. This needs to be reviewed so that protestors can voice concerns over policing in general, and police forces can adapt efficiently to learn from previous mistakes.

Surveillance

Covert surveillance has clearly proved to be both costly and ineffective in relation to environmental campaigners. Sir Hugh Orde, the chief of ACPO, argues that the decision to use covert surveillance

of protest groups should be agreed on a case-by-case basis through judicial approval. This seems like a sensible start, although any continuing exercise of covert surveillance should also be reviewed on a regular basis. It is not acceptable from a financial or human rights perspective to have undercover police officers operating for extended periods of time when there is no reasonable evidence to suggest that the groups they are infiltrating are likely to be a major significant risk to the public.

The planned independent inquiry into covert police operations is to be welcomed although needs to also address the lesser known surveillance measures that campaigners fall victim to on a more regular basis. This includes the role of Forward Intelligence Teams and the gathering of personal data during stop and search. These are all issues that cross the line between policing to uphold public order and violating protestors' human rights. FIT Watch and No Police Spies are organisations already active in this campaign.

As well as this review, Liberty is campaigning through the Freedom Bill to introduce a mechanism for obtaining judicial approval of covert surveillance operations, so that operations cannot be signed off by the police themselves.[80] Furthermore, as well as looking at the use of surveillance by public bodies, the Government should look to develop a code of practice to regulate private surveillance companies.

ACPO

Most importantly, the issue of proportionality needs to be urgently addressed. Policing public order is an expensive business. Some Metropolitan forces have reported substantial increases in public order budgets in the last year.[81] With public finances so constrained, it is imperative that these funds are used in the most cost-effective way. ACPO's domestic extremism units have been moved into the Metropolitan Police. Although this greater accountability is to be welcomed, it still does not address the question of whether we need to have dedicated public funds to tackle an over-exaggerated risk of domestic extremism in relation to environmental protest. Not only should the tactics of these teams be independently reviewed, but so too should their remit so that any action taken to tackle domestic extremism is justified and proportionate to the risk.

5.3 Education

ACPO and local police forces have both used schools as a vehicle to discourage protest. ACPO has produced guidance for schools on discouraging 'domestic extremism', and in the run-up the student protests, police in Hertfordshire canvassed school pupils to stay away from demonstrations. Would it not make more sense to think of ways of teaching children about democracy and how to campaign on issues that are important to them? A more balanced and informed debate in schools could enable young people to voice their concerns in a peaceful and democratic way without resorting to violence. The English Secondary Schools Association does just this, providing training to school groups on how to campaign for change.[82] The programme teaches young people listening and debating skills, giving them the confidence to speak up on issues that matter to them.

Education and awareness can also play a part in gaining greater public understanding and tolerance of the importance of protest. Current public attitudes to protest are mostly negative, but there has been a wave of support for the actions of protestors in Egypt after the recent demonstrations. More work is needed by the environment community to show the positive side of protest in the media. The recent victory on the Save our Forests campaign is one such example where people power has worked in order to change the system, with minimum disruption to the lives of ordinary citizens.

Notes

1. www.guardian.co.uk/commentisfree/2011/mar/28/police-spying-protesters-cuts-protest-undercover
2. www.liberty-human-rights.org.uk/policy/bill-tracker/police-reform-etc-bill.php
3. www.cabinetoffice.gov.uk/news/coalition-documents
4. www.privacyinternational.org/ephr
5. www.essex.ac.uk/law/news/Blunkett_Lecture%202009.doc
6. Liberty's response to the Home Office's 'Your Freedom' consultation October 2010
7. *Ibid*
8. www.homeoffice.gov.uk/publications/about-us/legislation/police-reform-bill/
9. http://www.publications.parliament.uk/pa/ld201011/ldbills/062/11062.97-103.html#j601
10. www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/47/4705.htm
11. www.freebeagles.org/caselaw/CL_bp_Laporte_full.html
12. www.superglue3.org/
13. www.liberty-human-rights.org.uk/human-rights/justice/stop-and-search/section-44/index.php
14. http://news.bbc.co.uk/1/hi/uk/8453878.stm
15. www.legislation.gov.uk/ukpga/1984/60
16. www.yourrights.org.uk/yourrights/the-right-of-peaceful-protest/other-police-powers-to-restrict-right-to-protest.html
17. http://climatecamp.org.uk/get-involved/working-groups/legal/Kingsnorth_Policing_Report.pdf
18. *Ibid*
19. Interview with Sam Walton
20. www.fitwatch.org.uk/2011/08/01/political-policing-during-royal-wedding-in-edinburgh/
21. www.guardian.co.uk/environment/video/2009/apr/19/police-activism
22. www.legislation.gov.uk/ukpga/2000/11/section/58
23. www.guardian.co.uk/environment/2009/jun/21/kingsnorth-protester-arrests-video-complaint
24. www.theyworkforyou.com/lords/?gid=2009-10-20a.579.0
25. Interview with Sam Walton
26. Interview with Mike Schwarz
27. www.climaterush.co.uk/our-actions
28. www.bbc.co.uk/news/uk-13973932
29. www.guardian.co.uk/uk/2011/jul/03/police-bail-justice-system
30. www.monbiot.com/2008/12/23/the-paranoia-squad/
31. www.lawsoncruttenden.co.uk/articles/157_070601_environmentalliabilitiy.pdf
32. *Ibid*
33. www.indymedia.org.uk/en/2006/12/358491.html
34. www.officialdocuments.gov.uk/document/other/9780108509599/9780108509599.pdf
35. www.guardian.co.uk/2009/oct/25/
36. www.guardian.co.uk/law/afua-hirsch-law-blog/2011/jan/13/protest-activism
37. Interview with Climate Camp Legal Team
38. www.guardian.co.uk/uk/2009/oct/25/police-surveillance-protest-domestic-extremism
39. www.netcu.org.uk/about/about.jsp
40. www.monbiot.com/2011/01/17/the-real-domestic-extremists/
41. www.bbc.co.uk/news/uk-13462904
42. www.guardian.co.uk/uk/undercover-with-paul-lewis-and-rob-evans/2011/jul/21/operation-pegasus-mark-kennedy-ratcliffe
43. www.guardian.co.uk/environment/2008/dec/16/kingsnorth-environment-police-inquiry-injuries
44. www.npia.police.uk/en/docs/Intelligence_Led_Policing_PA.pdf
45. http://ratcliffeontrial.org/home/
46. *Ibid*
47. www.guardian.co.uk/environment/2011/jan/10/mark-kennedy-undercover-cop-activist
48. www.guardian.co.uk/uk/2011/jan/18/covert-policing-cleanup-acpo
49. Operation estimated at £300,000 and trial of 20 convicted protestors estimated at £400,000 http://www.bbc.co.uk/news/uk-england-nottinghamshire-12122009
50. www.indymedia.org.uk/en/2011/01/472027.html
51. www.channel4.com/news/undercover-police-officer-filmed-in-clown-costume
52. www.bindmans.com/index.php?id=945
53. www.guardian.co.uk/uk/2010/dec/21/ian-tomlinson-inquest-judge-fair
54. http://news.bbc.co.uk/1/hi/england/kent/7968884.stm
55. www.robedwards.com/2009/04/revealed-a-web-of-police-bids-to-infiltrate-protest-groups.html
56. www.guardian.co.uk/environment/2011/feb/14/energy-firms-activists-intelligence-gathering
57. www.telegraph.co.uk/news/uknews/5184938/Civil-servants-gave-confidential-police-documents-to-E.-ON-security-guards-before-climate-protest.html
58. www.yourrights.org.uk/yourrights/the-right-of-peaceful-protest/harassment-and-interference-with-contracts.html
59. www.greenpeace.org.uk/
60. www.guardian.co.uk/environment/2011/jun/02/cairn-greenpeace-arctic-drilling-protest
61. www.yourrights.org.uk/yourrights/the-right-of-peaceful-protest/the-historic-right-to-peaceful-protest.html
62. www.equalityhumanrights.com/human-rights/what-are-human-rights/the-human-rights-act/freedom-of-thought-belief-and-religion/
63. Schwarz, Mike, 'The Law of Public Order and Protest' OUP, 2010.
64. www.hmic.gov.uk/sitecollectiondocuments/ppr/ppr_20090706.pdf
65. Interview with Frances Wright
66. www.jonathonporritt.com/Campaigns/greenest-government-ever
67. Based on 2010 spending http://www.guardian.co.uk/news/datablog/2010/jun/04/coins-combined-online-information-system-taxandspending
68. www.neweconomics.org/articles/ten-big-questions-about-the-big-society-html
69. www.leftfootforward.org/2010/11/the-freedom-bill-must-enable-people-to-help-change-our-society/
70. http://uklsa.co.uk/index.php?option=com_content&view=category&layout=blog&id=904&Itemid=70
71. Interview with Phil Wood
72. www.guardian.co.uk/world/2011/jul/08/anti-cuts-protest-fernie-sentence
73. www.bbc.co.uk/programmes/p00jkljt
74. http://freedom.libdems.org.uk/
75. www.dpm.cabinetoffice.gov.uk/news/deputy-pms-first-speech-constitutional-reform
76. www.liberty-human-rights.org.uk/policy/bill-tracker/protection-of-freedoms-bill-2011.php).
77. Interview with Mike Schwarz
78. www.hmic.gov.uk/sitecollectiondocuments/ppr/ppr_20090706.pdf
79. www.hmic.gov.uk/SiteCollectionDocuments/PPR/PPR_20110209.pdf
80. www.liberty-human-rights.org.uk/pdfs/policy11/liberty-s-second-reading-briefing-on-the-protection-of-freedoms-bill-feb-201.pdf) .
81. www.hmic.gov.uk/SiteCollectionDocuments/PPR/PPR_20110209.pdf
82. www.studentvoice.co.uk/index.php?option=com_content&view=article&id=48&Itemid=89