

Should the right to protest have any limits?

Protesting has undoubtedly helped shape our modern society by enabling all to enjoy the rights and freedoms previously denied to some. Not only is “the right to freedom of peaceful assembly” protected under Article 11 of the ECHR, but protesting is also arguably one of the cornerstones of democratic societies by empowering citizens with a platform to express their opinions and gifting them a final line of defence to challenge injustices.¹

The benefits of protesting can be seen through recent movements such as the Black Lives Matter protests in 2020. These protests forced countries around the world, including the UK, to acknowledge the role they had played in colonialism and slavery, and drew international attention to institutional racism. Whilst the movement for equality is still ongoing, these protests benefited society not only through the awareness of racism they gave to the world, but the attention gathered unequivocally contributed to the conviction of Floyd’s killer Derek Chauvin.²

However, the possibility that protests promote dangerous ideologies rather than confronting injustices shows the need to place restrictions on protesting. This can be seen through groups such as the neo-Nazis and the KKK, which have diminished in influence in the 21st century, yet still hold rallies which lead to “vicious” brawls, harming the communities they oppose.³ The impact of these protests raises a further question; should we allow divisive movements to exist when they cause harm to people? In all modern democracies, citizens have the right to the freedom of speech, but by examining the behaviour of these groups, it can be argued that we need to place restrictions on protests with dangerous ideologies that have an actual, detrimental impact on the lives of others.

Despite this, the potential impact of politics on protests provides a reason not to impose restrictions. This is highlighted through the hypocrisy of politicians, such as Suella Braverman who opposed pro-Palestine protests held on Armistice Day that sought to demand a ceasefire in Gaza to protect innocent civilian lives. Braverman was hypocritical here as despite calling

¹ *European Convention on Human Rights*. Article 11 [online] Available at: https://www.echr.coe.int/documents/d/echr/convention_ENG [Accessed 14 Feb. 2024].

² Thomas, T. (2021). *Black Lives Matter Philly organizers say even with Chauvin guilty verdict, their work isn't done*. [online] 6ABC. Available at: <https://6abc.com/george-floyd-black-lives-matter-chauvin-verdict-guilty/10534814/> [Accessed 13 Feb. 2024].

³ The Guardian (2016). KKK rally in California erupts into vicious brawl: ‘All hell broke loose’. *The Guardian*. [online] 28 Feb. Available at: <https://www.theguardian.com/us-news/2016/feb/28/kkk-rally-california-turns-violent-counter-protesters> [Accessed 17 Feb. 2024].

these protests “hate marches”, she joined a pro-Israel protest in January.⁴ November’s pro-Palestine protest was no more violent than January’s pro-Israel protest, which shows that political leaders can be biased due to their political ideologies. This bias highlights why we should not leave the development of restrictions on protesting to individual ministers to create using statutory instruments as these laws could easily enforce political ideologies that marginalise viewpoints the government disagree with. This in turn creates the danger of our legal system becoming too politicised, potentially endangering the separation between the Executive, the Legislative, and the Judiciary.

Regardless of the danger that political ideologies pose, restrictions arguably do need to be enforced as some people take protests too far, joining them to incite violence such as rioting or looting or commit offences such as arson. These crimes often impact innocent civilians who are not to blame for injustices, therefore highlighting the detrimental impact that protests can have. This impact was seen through clashes in 2020 between far-right groups and police, where a 28-year-old was arrested and eventually jailed for two weeks for desecrating a memorial to PC Palmer, a police officer killed in the 2017 Westminster terrorist attack, by urinating on it.⁵ PC Palmer had no possible connection to these clashes or the ongoing conflict between far-right protests and marginalised ethnic groups, and whilst this desecration had no direct impact on PC Palmer or his family, the message it sends of a lack of care or respect undoubtedly shows the need for restrictions to protect public decorum.

However, not all violence carried out in protests can be said to have a detrimental impact on society. An example of this can be seen in the case of the Colston Four, who, during a Black Lives Matter protest, threw the statue of Edward Colston into the Bristol docks. Whilst the Attorney General’s Reference No.1 of 2022 has clarified that the circumstances surrounding this case “did not involve peaceful protest” and that “The toppling of the statue was violent”, this act of violence did not injure or affect anyone’s livelihood in the manner that actions such as looting a shop would.⁶ Public opinion on this matter was reflected through the jury who acquitted the defendants of criminal damage to show their support for their movement and the right of citizens to protest. Therefore, whilst violence can be a part of protests, as it does not always directly affect people, it provides an argument for enforcing fewer restrictions.

Whilst violence is often associated with protests, many protests are peaceful, seeking to disrupt everyday life rather than cause deliberate harm. This can be seen through the actions of climate groups who often glue themselves to roads to disrupt traffic to convey their agendas. Alternatively, some protests have been held with no intention to disrupt the lives of others, but instead to pay respect. This can be seen through the vigil held after the murder of Sarah

⁴ Syal, R., Sabbagh, D. and Stacey, K. (2023). Suella Braverman calls pro-Palestine demos ‘hate marches’. *The Guardian*. [online] 30 Oct. Available at: <https://www.theguardian.com/politics/2023/oct/30/uk-ministers-cobra-meeting-terrorism-threat-israel-hamas-conflict-suella-braverman> [Accessed 18 Feb. 2024].

⁵ BBC News (2020). Man jailed for urinating at PC Keith Palmer memorial during protest. *BBC News*. [online] 15 Jun. Available at: <https://www.bbc.co.uk/news/uk-england-london-53051096> [Accessed 20 Feb. 2024].

⁶ *Attorney General’s Reference No.1 of 2022* [2022] (Court of Appeal) Available at: <https://www.judiciary.uk/wp-content/uploads/2022/09/AG-Ref-Colston-Four-judgment-280922.pdf> [Accessed 19 Feb. 2024].

Everard, where crowds gathered to pay their respects. Despite this, the police intervened with the vigil and arguably incited violence, pushing their way through the crowd, and trampling on the tributes left for Everard. Many protestors refused to leave, leading to the arrest of many women. Whilst there is an argument that the police were attempting to protect the public as this protest occurred during the COVID pandemic, protestors have claimed that the correct measures such as face masks and social distancing were taken.⁷ Such a claim is evidenced by photographs of protestors wearing facemasks. Even if this is not the case, the police responded with a disproportionate level of force, seen most clearly in the photo of a woman being pinned down by two police officers. Not only do photographs such as this highlight the level of violence used by the police officers, described by a report published by the All-Party Parliamentary Group on Democracy and the Constitution as “excessive force”, but they also highlight the irony of the arrests and the need to protest as the violence of a serving police officer caused Everard’s death.⁸

Additionally, the involvement of the police in this vigil raises a further issue regarding the enforcement of regulations. During the COVID pandemic, the police were tasked with enforcing many new pieces of legislation that governed the freedoms of citizens. Due to the complexity of the new laws passed, and how frequently they appeared, the police often did not fully understand them, which created the risk that the police would not be enforcing the actual law, but their version of the law. A 2021 report by His Majesty’s Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) has found that it was hard for the police to “keep up” with the legislation passed and that this was made worse “by a widespread confusion in relation to the status of Government announcements”.⁹ This can be seen through the inconsistency with which fines were given, with two women being fined for driving 5 miles for a walk, whilst Boris Johnson, the Prime Minister, received no fine for cycling in the Olympic Park, 7 miles away from his home in Downing Street.¹⁰ Whilst the report by HMICFRS shows that these inconsistencies were arguably the fault of the government for not scrutinizing the emergency laws they created

⁷ Graham-Harrison, E. (2021). *Police clash with mourners at Sarah Everard vigil in London*. [online] The Guardian. Available at: <https://www.theguardian.com/uk-news/2021/mar/13/as-the-sun-set-they-came-in-solidarity-and-to-pay-tribute-to-sarah-everard> [Accessed 26 Feb. 2024].

⁸ All-Party Parliamentary Group on Democracy and the Constitution (2021). *Police Power and the Right to Peaceful Protest*. [online] *Institute for Constitutional and Democratic Research*, Gray’s Inn Square, London: Institute for Constitutional and Democratic Research, p.59. Available at: <https://static1.squarespace.com/static/6033d6547502c200670fd98c/t/60dcb2dbca4d9050ca9fe09d/1625076444200/Clapham+and+Bristol+Inquiry+Report+-+APPROVED.pdf> [Accessed 19 Feb. 2024].

⁹ His Majesty’s Inspectorate of Constabulary and Fire & Rescue Services (2021). *Policing in the pandemic The police response to the coronavirus pandemic during 2020*. [online] *His Majesty’s Inspectorate of Constabulary and Fire & Rescue Services*, p.38. Available at: <https://assets-hmicfrs.justiceinspectrates.gov.uk/uploads/policing-in-the-pandemic-police-response-to-coronavirus-pandemic-during-2020.pdf> [Accessed 26 Feb. 2024].

¹⁰ Cunliffe, R. (2021). *The police’s failure to understand Covid-19 laws shows the government’s recklessness*. [online] *New Statesman*. Available at: <https://www.newstatesman.com/politics/2021/04/police-s-failure-understand-covid-19-laws-shows-government-s-recklessness> [Accessed 26 Feb. 2024].

in a hurry to get them passed, the injustices created through the enforcement of these regulations show that if the police are to accurately enforce protest regulations, the pieces of legislation governing these powers need to be drafted in a more accessible manner.

Ultimately, I believe that the right to protest requires some limitations as the need to prevent excessive violence and uncertainty in which rights and freedoms are allowed is too great a problem to ignore. Whilst the involvement of politicians and their individual ideologies raises a valid concern over the creation of restrictions on such a divisive matter as protesting, it is key to note that our Members of Parliament are intended to be a representative sample of our country, and therefore their ideologies likely only reflect viewpoints that exist within the wider public. Therefore, to ensure that the human rights such as the freedom of speech of the majority are met, we must allow all restrictions to be debated and drafted by a democratically elected, representative sample of the population. Additionally, due to the uncertainty of police officers over what certain regulations entail, efforts must be made to make regulations accessible to every citizen rather than using discursive language that only lawyers can understand. Consequently, regulations should be contained within a single Act that identifies restrictions on the level of violence permitted in protests, as well as the enforcement powers of the police. Such a concise, unified approach will not only help tackle the issues that protests in the 21st century raise, whilst ensuring the freedoms and liberties of our citizens are not only recognised in the law but protected by the state.