WHOSE FREEDOM?

LAW, POWER AND SOCIAL JUSTICE

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The relationship between law, power and social justice is a complex and dynamic one that is constantly being renegotiated.

My focus this morning is on protest and where it fits within that relationship. Peaceful protest and assembly are essential and deeply human tools for building momentum around social justice causes and law reform; for speaking truth to power.

It can be unpopular, unpalatable and disruptive or annoying, but those attributes are often the very reason it needs to be protected.

Protest has garnered a lot of public attention in recent years, whether because of contentious causes involved or the means that are employed by protesters. It has been met by increased policing and the passing of numerous laws criminalising aspects of protest or enabling imposition of conditions or restrictions on them. It raises the question of whether protest rights are being eroded or if this is a necessary evolution of public order law in an increasingly divided world.

I'll talk about the legal contours of the right to protest in this country under the Human Rights Act 1998 and the common law, including "direct action" and civil disobedience – conduct that would otherwise be unlawful but which by its conscientious nature requires legal tolerance.

I'll touch on recent laws and high-profile decisions involving protest.

I'll then look at the specific context of academic freedom and share some thoughts about roles that law professors can play in helping future lawyers navigate that dynamic relationship between law, power and social justice.

Protest rights under the law of the United Kingdom

The right to protest in the UK is protected by Articles 10 and 11 of the ECHR (freedom of expression and freedom of assembly respectively), as well as the common law.

Article 10 is one of two Convention rights singled out for special mention in the Human Rights Act 1998 – a court must have particular regard to its importance (the other being right to freedom of thought, conscience and religion).

Article 10 reads:

> *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*

But it is not an absolute right. Article 10 (2) continues:

> *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions restrictions or penalties as are prescribed by law and are necessary in a democratic society, ... for the prevention of disorder or crime, for the protection of the reputation or rights of others ...*

The same is true for Article 11.

Any limitations on protest must adhere to the principles of:

- Legality – being prescribed by law

- Necessity – being demonstrably geared at pursuing one of the enumerated legitimate aims in Article 10/11 (2).
- Proportionality – being no more restrictive than absolutely necessary to achieve the legitimate aim. This criterion will not be met if there is a less restrictive alternative means available to achieve the aim.

The ECtHR asks whether the measure strikes a "fair balance" between the rights of the applicants and those of society at large. There are several factors that inform this balancing test:

- First, the court has to focus on the evidence of the actual (as opposed to merely prospective, or theoretical) impact which the protest has been shown to have had on the rights of others. (*Obote v. Russia*, 2019)
- Second, not all kinds of professed "harm" caused by a protest justify restricting it. For instance, people being offended or annoyed by a protest is not enough. In *Faber v Hungary* (2012) the ECtHR said that Article 10 protects "*not only … "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those which offend, shock or disturb*," and Article 11 "*protects a demonstration that may annoy or cause offence to persons opposed to the ideas or claims that it is seeking to promote*". As the late Stephen Sedley LJ put it in relation to the common law right of protest, "*Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence.*" (Redmond-Bate v DPP (1999).
- Third, some level of disruption caused by a non-violent assembly in a public place has to be tolerated (*Kuznetsov v Russia*).

The level of permitted disruption was explored by the Court of Appeal in *Samede v City of London* [2012] EWCA Civ 160. Lord Neuberger found that a three-month continuous protest camp of

over 150 tents in the churchyard of St Paul's Cathedral that impeded access for worshippers went beyond Art 11's protection and could be lawfully curbed by an injunction.

Injunctions are one method by which protest may be limited. Another is pre-authorisation regimes whereby the intention to hold a demonstration above a specified size must be notified in advance to the police or other authorities and permission granted, which may come with conditions. Such regimes are not treated as inherently contrary to Article 11 (*Kudrevicius v Lithuania*, Grand Chamber, 2015). However, every refusal of authorisation has to be proportionate, and dispersing or prosecuting an assembly merely for being unauthorised may violate Article 11.

Criminal prosecution of protesters, and civil disobedience

Many cases heard by our domestic courts have involved protesters bringing human rights challenges against their being prosecuted and convicted of offences such as criminal damage, obstruction of a highway or public nuisance.

The starting point is that "[a] peaceful demonstration should not, in principle, be rendered subject to the threat of a criminal sanction" (*Ekrem Can v Turkey* (2022).

In some cases, unlawful conduct by protesters is a form of **civil disobedience**. In the 2007 case of *R v Margaret Jones*, Lord Hoffmann wrote:

> *My Lords, civil disobedience on conscientious grounds has a long and honourable history in this country. People who break the law to affirm their belief in the injustice of a law or government action are*

sometimes vindicated by history. The suffragettes are an example which comes immediately to mind. It is the mark of a civilised community that it can accommodate protests and demonstrations of this kind.

Courts have considered whether, even if there is a case to answer that a crime has been committed, it may nonetheless be disproportionate under the Convention to prosecute or convict a protester.

The Supreme Court case of *Ziegler v DPP* (2021) is a significant authority on this point. In that case, the appellants lay down, attached to lock boxes, on the road leading up to the ExCel Centre in September 2017 where an International Arms Fair was due to take place.

The police removed them and charged them with wilful obstruction of a highway contrary to section 137 of the Highways Act 1980. At trial they got the charges dismissed by arguing that Article 10 protected their conduct. The prosecution appealed by way of case stated and eventually it went to the Supreme Court, which held that the magistrate had a duty to assess whether convicting the appellants is a justified restriction on their right to freedom of assembly or expression. It found the District Judge had been right to take into account in his balancing exercise that the actions did not give rise to disorder – nor were likely to provoke disorder. There was no commission of any other offence above the actual protest itself; the length of time of the protest of 90 minutes. "Political views, unlike "vapid tittle-tattle" are particularly worthy of protection.

There was then some rowing back from this case by the Divisional Court in DPP v Cuciurean [2022] EWHC 736 – finding that Ziegler was limited to the context of obstructing highways and not applicable in privately owned land, and it only applied to offences which have a "lawful excuse" defence prescribed.

And so, to the Colston statue

This was the toppling of the statue of slave trader and philanthropist Edward Colston in Bristol during a march in 2020.

It became the subject of a prosecution for criminal damage.

- The jury acquitted the protesters. One of the legal directions was that the jury had to consider whether conviction was proportionate with their rights to freedom of expression.
- On appeal by the Attorney-General, the Court of Appeal set out that *Ziegler* does not set out any new principle that prosecution has to prove the conviction is proportionate" but rather they are fact sensitive and so the statutory defence of lawful excuse will undoubtedly provide a route to proportionality assessment.
- In this case the Court of Appeal found that significant damage to a property would fall outside the protection of the Convention because it was violent and not peaceful.

  It is fact sensitive –to expand; daubing a bit of soluble paint on a pavement might be criminal damage but to prosecute it for doing so as part of a political protest might well be a disproportionate response. Here the damage to the statue exceeded £5000.

- Thus, the question of proportionality could not fall to the jury, as the conduct in question was not protected by Convention rights. However, the Court of Appeal did not disturb the jury's acquittal, which had been based not on proportionality but application of the "lawful excuse" defence.

"Just Stop Oil" paint-throwing protests have been met with mixed responses:

- Protesters who threw orange powder on Stonehenge were acquitted in October 2025 of causing public nuisance after the judge directed the jury to consider whether convicting would be a proportionate interference with their Art 10 and 11 rights.
- Those who threw paint on Van Gogh's Sunflower at the National Gallery, and on the HM Treasury Building, received unanimous guilty verdicts for criminal damage (where proportionality is not given to the jury).

Direct action protests

Protest tactics that involve intentionally causing disruption or obstruction, whether to impede government or business action or motivate citizens into awareness, are in principle capable of attracting protection under the ECHR. Such protests might involve sit- ins, roadblocks, protest camps, breaking onto private land and even long-term occupations.

In the case of *Roberts & Others* [2018] EWCA Crim 2739 (where I represented the appellant—a piano tuner), the Court of Appeal said, "There is no doubt that direct action protests fall within the scope of articles 10 and 11".

The three Appellants had climbed onto lorries carrying drilling equipment along the A583 to the Cuadrilla fracking site on Preston New Road, the major road between Preston and Blackpool in Lancashire. They had remained on the lorries for between two and three and a half days blocking one of carriageways and causing 'massive disruption' [at 20] over a wide area and inconvenience to 'thousands of people' including local residents and businesses [at 22]. The Defendants were convicted after trial of public nuisance.

Sentencing and protester motivation

Britain has a long tradition of peaceful protest. Thankfully, we have evolved from the repressive – often brutal way (in the case of the suffragettes) – that the state dealt with protesters.
At the time of the Preston anti- fracking case, environmental protesters had not been sentenced to prison (directly for the offence from the protest) since 1932, when ramblers – inspired by Gandhi who'd made a highly publicized visit to Darwin encouraging the boycotting of Lancashire cotton - tried a mass protest to force open access to Kinder Scout.

This has shifted in recent years and Just Stop Oil has seen a tougher approach to sentencing – although many of the cases are in relation to breaches of injunctions and the sentencing for contempt of court is imprisonment (immediate or suspended).

Historically though, Lord Hoffmann's dictum about civil disobedience that I cited earlier, spoke of an unwritten compact between protesters and law enforcement:

> "*The protestors behave with a sense of proportion and do not cause excessive damage or inconvenience. And they vouch for the sincerity of their beliefs by accepting the penalties imposed by the law. The police and prosecutors on the other hand behave with restraint and the magistrates impose sentences which take the conscientious motives of the protestors into account*."

In the *Roberts*[1] fracking case (I represented all appellants), the Court of Appeal agreed that on the particular facts, a custodial sentence was excessive -though it did not accept that peaceful

[1] *Roberts & Others* [2018] EWCA Crim 2739

protest-related crimes could *never* attract imprisonment. The sentences of imprisonment were reduced to conditional discharges.[2]

In another case where I acted, breach of an injunction, (*Cuadrilla*) an appeal against custodial sentences for breaching injunctions made against anti-fracking protesters, the sentences of imprisonment were suspended sentences. The appeal succeeded in part and the Court of Appeal reduced one sentence to 4 weeks' imprisonment suspended.

There remains connection to the Hoffman compact in the principles of sentence -Just Stop Oil protesters had some of their sentences reduced on appeal for climbing gantries over the M25 (*R v Hallam and others* [2025] EWCA Crim 199).

In these cases, the appeal courts considered the conscientious motivations of the defendants to reduce their culpability in the sentencing calculus.

However, it is clear that the courts have a harsher approach to sentencing protestors than they had in the past.

This fits with a trend towards increased use of law enforcement against protesters, which includes a succession of new laws being passed.

New laws and powers – increasing clampdown on protests?

There have been multiple pieces of legislation which further restrict protest:

[2] The Court indicated that the sentences would have been community orders but they took into account the time that the appellants had spent in custody.

- Police, Crime, Sentencing and Courts Act (PCSC) passed in 2022 gives police additional powers to place conditions on static protests to those on marches.
- A further two triggers were added under the Public Order Act 2023 – including impacting people's working lives (which often is the point of protest).
- An unjustifiably noisy protest that causes harm to others may now be shut down.
- People taking part in a protest no longer have the defence of being ignorant of the conditions that have been imposed upon a protest – it can be shown that a person ought to have known.
- The maximum prison sentence for someone who has damaged a statue has been raised to 10 years.
- A new statutory offence of "intentionally or recklessly causing public nuisance", which previously existed, in common law was introduced. It also carries a sentence up to 10 years in prison.
- There are new offences of interfering with key national infrastructure which captures protesting at sites of offending corporations – powers stations
- Expanding stop and search powers
- Protest banning orders
- The Public Order Act 2023 includes rules criminalising "locking on," where protesters fasten themselves to each other or objects. It now carries a sentence of up to 51 weeks' imprisonment.
- Section 2 also makes it illegal to carry an object that could be used for locking on - with the intention of doing so.
- Police had indicated that they did not require further powers. But on the King's Coronation, six Republic activists were arrested "on suspicion of going equipped to lock

on" - a new offence under the Public Order Act 2023. Caught up was pro-monarchist. All were released without charge.

In 2023, the government passed regulations redefining the police's power to impose conditions on public processions and assemblies. That power (in ss 12 and 14 of the Public Order Act 1986) can be exercised if the police anticipate a "serious disruption to the life of the community". The regulations defined serious disruption as meaning "a hindrance that is more than minor". Liberty successfully challenged the regulations (*R (National Council for Civil Liberties) v SSHD* [2025] EWCA Civ 571). The High Court found them ultra vires, reaching the common-sense conclusion that "serious" implied a high threshold, and these regulations undermined that.

Currently in Parliament is a new Crime and Policing Bill, which adds new offences:

- Wearing or using items to conceal identity at protests within a designated area (it is a defence if the item is used for religious, health or work purposes—but not, as the Equality and Human Rights Commission point out, for protection from weather or personal safety (which could include victims of domestic violence). This has drawn criticism given that the police already have powers under the Criminal Justice and Public Order Act 1994 to require the removal of identity-concealing items.
- Possessing pyrotechnics at a protest
- Climbing on specified war memorials
- Protesting outside the dwelling of a public office holder (except an official residence)

The bill provides new powers:

- The Home Secretary may designate Extreme Criminal Protest Groups which commit public order or infrastructure offences with political motives, and membership of which becomes an offence.

- Police may impose conditions on protest in the vicinity of places of worship if they may intimidate people of reasonable firmness and deter them carrying out their worship activity.
- Serious disruption to the life of the community under the Public Order Act 1986 must be interpreted to take account of cumulative disruption. This late amendment, added late in the Lords after the Commons had done its major scrutiny, has been criticised on the basis that, as MP Apsana Begum put it, "the whole point of protests is that they are supposed to have a cumulative impact." She went on to ask: "Should the suffragettes or the Chartists have given up after just one attempt?"

Gaza protests and Palestine Action

This Bill makes its way through Parliament in the context of almost three years of sustained protests about the conflict in Gaza, and last year's designation of Palestine Action as a proscribed terrorist organisation under the Terrorism Act 2000. That proscription has resulted in hundreds of arrests of protesters for the words written on their placards.

In February 2026, the High Court ruled that the proscription of Palestine Action was unlawful. It did so on two grounds: first, that the disruptive advantage proscription would bring in terms of triggering offences was not a relevant reason for proscription under the Home Secretary's policy, and second that the interference with Arts 10 and 11 ECHR was disproportionate considering that only a small amount of PA's activity amounted to terrorism.

The ban remains in place pending appeal, and while police initially said they would not enforce it, they have resumed doing so and only a few days ago made over 500 arrests for supporting PA at a protest.

I'm sure you've all seen countless videos of interactions between protesters and the police. One that stood out to me is that of Laura Murton, who was threatened with arrest by armed Kent police unless she gave them her name and address, because they considered her display of a Palestinian flag and a sign reading "Free Gaza" at a roadside amounted to the offence of expressing an opinion or belief supportive of Palestine Action. Kent Police ultimately apologised and admitted that she had *not* committed any offence, but the video shows what a stressful encounter it was—one which the police accepted should not have happened at all.

The offence of expressing an opinion or belief supportive of a proscribed organisation, under section 12(1A) of the Terrorism Act 2000, was recently upheld as compatible with Article 10 by the Supreme Court (*R v ABJ; R v BDN* [2026] UKSC 8). The court at paragraph 82 set out clearly the ingredients of the offence. It is important for police to study this carefully to avoid a situation like Laura Murton's recurring.

Academic freedom

How do these rights apply in academia and relate to the work of scholars and teachers.

In a series of cases involving Turkey, the ECtHR has set out its conception of academic freedom under Article 10.

In *Mustafa Erdogan v Turkey* (2014), the Court held that Turkey had violated a constitutional law professor's Article 10 rights by allowing a defamation action by judges whose ruling he had criticised in a journal article. It opined that Article 10 protects the "freedom of academics to carry out research and to publish their findings, and beyond this, it "also extends to the

academics' freedom to express their views and opinions, even if controversial or unpopular, in the areas of their research, professional expertise and competence."

The applicant in that case had written this:

He said "*This latest judgment … has demonstrated another thing: the professional capabilities of most of the court members are insufficient for the job. Moreover, they are not willing to compensate for this insufficiency. They are closed to knowledge, they have no passion for their jobs and they are incapable of becoming open-minded.*"

A bit harsh?

Although the ECtHR recognised that judicial independence requires protection from unfounded destructive attacks, it felt that this article amounted to reasoned criticism rather than a gratuitous personal attack.

However, the Court has also given latitude to academic work where it has caused offence to a member of a particular community.

In *Aksu v Turkey* (2012) the Grand Chamber held that Turkey had not violated Article 8 when its courts rejected a complaint that a scholarly book about the Roma people of Turkey was an insult to the community. It noted that the book was based on empirical and ethnographic research and, while discussing criminal activity by some members of the community, the domestic courts were entitled to treat as sincere the author's claims of wishing to shed light on an ostracised community.

Closer to home, freedom of speech in the university context recently came before the courts, as the University of Sussex's judicial review of the Office for Students' imposition of a fine for its

Trans and Non-Binary Equality Policy Statement was heard in February. The judgment will likely make conclusions on the interpretation of the Higher Education (Freedom of Speech) Act 2023 and its relationship to Article 10 ECHR.

The role that law teachers can play

Let's return to that relationship between law, power and social justice.

Law teachers have a powerful role to play in helping future lawyers and academics to navigate the complexities and contradictions between these ideas. Legislation ultimately is the product of political processes and so reflects extant power dynamics in society.

Power imbalances may be revealed in the way that laws are enforced—or not enforced. And laws and legal processes may create or exacerbate injustices in society.

So, law cannot be studied in isolation.

Students need to see it in the context of the forces that have shaped it. Legal history can be key and is a solid foundation to ground your analysis of law.

My tips:

- Encourage students – and students be encouraged -to study the social movements that led to changes in law.
- Exhort them to look at cases not only as sources of legal principles but as stories involving very human stakes for those involved. Don't lose sight of the human stories.
- The human stories are empowering to look for ideas for how to reform the law to address injustices.

Conclusion

Equally, the law's integrity and legitimacy as a system for dispensing justice depend on its being treated with rigour and precision.

For any practising barrister, their role is to seek justice according to law. A barrister's duty is to the court and then then to the client, and they have to maintain a level of independence.

The law is the closest thing we have to an objective method of dispensing justice, and legal practitioners should not lose sight of that.

It is imperfect and is always being refined.

Martin Luther King Jr, someone who knew a thing or two about protest, said "the moral arc of the universe is long but it bends towards justice".

So too the same could be said of the evolution of law – although I would add that it may sometimes need bend back in the direction it has come.

All of you in this room equip and empower the next generation to shape that evolution of law towards ever more justice.

I will go back to where I started. Whose freedom? It belongs to us all.

16 April 2026

Kirsty Brimelow KC

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