

Institution: University of East Anglia
Unit of Assessment: 20 Law
Title of case study: Restoring the Right to Peaceful Protest
<p>1. Summary of the impact</p> <p>The case study examines the far-reaching impact of David Mead's research over the past ten years, all undertaken while at UEA, into the law that regulates and guarantees peaceful protest and into the policing of demonstrations. His research has informed public policy in the UK and in Europe (Joint Committee on Human Rights (JCHR) and the Organisation for Security and Cooperation in Europe (OSCE)), been relied on by practitioners before the courts up to and including the Supreme Court (in both the UK and New Zealand), been cited by the European Court of Human Rights, led to providing expert evidence before the High Court and assisted NGOs (such as Greenpeace).</p>
<p>2. Underpinning research</p> <p>The major piece relied upon is his 2010 monograph with Hart (reference 3.1), currently the only academic treatise on the topic in the UK, and one of very few in the common law world. The book provides a critical perspective on the rules governing the exercise of the right to peaceful protest in the UK and identifies a host of current issues and tensions. It provides an extensive critical summary of Strasbourg case law on Article 11 (building on reference 3.3) – and is the first work to do so - and in doing so, highlights where domestic law and practice might currently be out of line. It is primarily a doctrinal critique, organised around five “themes” or scenarios – the location of protest, peaceful communication, direct action, police powers and private regulation – but with a host of inter-disciplinary or socio-legal insights. It concludes with a call for a Royal Commission and suggests terms of reference so providing a framework for the debate to take place. Outcomes that his research identifies include: the need for a single Protest Act, rather than a series of Public Order Acts; a clear statutory guarantee of an <u>individual's</u> right to peaceful protest; and a clear statutory definition of lawful “peaceful protest” – encompassing incidental, insignificant or short-lived disruption or obstruction distinct from illegitimate disruptive direct action, aimed at preventing an activity taking place. His research also supports the well-known “law in books vs. law in action” tension in the area of protest as shown, for example, by his analysis of the differential arrest rates for different UK police forces.</p> <p>More recent research has provided critical insight into kettling, and its case-law (reference 3.5) as well as highlighting the problems, tensions and consequences thrown up by the “privatised” regulation of protest, with a length (reference 3.2) outlining the consequences and problems – for matters such as transparency, accountability, burden of costs and “equality of arms” – when commercial targets utilise their civil rights and remedies to restrict protest. The last theme of Mead's research (references 3.1, 3.2 and 3.6) is an exploration of the effect on protest of increasing privatisation and commercialisation of public space, at the heart of the debates generated by the Occupy movement.</p>
<p>3. References to the research</p> <p>All single-authored pieces</p> <ol style="list-style-type: none"> 1. <i>New Law of Peaceful Protest: Rights & Regulation in the Human Rights Act Era</i> (Hart Oxford 2010): Professor Helen Fenwick called it “a well-researched, highly detailed, valuable, gap-filling contribution to the canon of literature on civil liberties and human rights...” (<i>The Times Higher Education</i> 24th June 2010). Professor David Feldman said the book was “...a treasure trove of sustained legal exposition and analysis and intelligently critical reflection [which] exemplifies the value of deep scholarship, careful reflection on concepts and principles placed in their social and economic context, and balanced judgement” ((2011) 70 Cambridge Law

Impact case study (REF3b)

Journal 469)

2. "A Chill Through the Back Door? Privatised Regulation of Peaceful Protest" [2013] Public Law 100-118 (all research undertaken at UEA. Accepted in Dec 2011 while still at UEA)
3. "The Right to Peaceful Protest under the European Convention on Human Rights: a Content Study of Strasbourg Case Law" [2007] European Human Rights Law Review 345 – 384.
4. "Strasbourg Discovers the Right to Counter-Demonstrate: A Note on Ollinger v Austria" [2007] European Human Rights Law Review 133 – 145
5. "Of Kettles, Cordons and Crowd Control: Austin v Commissioner of Police for the Metropolis and the Meaning of Deprivation of Liberty" [2009] European Human Rights Law Review 376 - 394
6. "Strasbourg succumbs to the temptation "to make a God of the right of property": peaceful protest on private land and the ramifications of Appleby v UK" [2003] Journal of Civil Liberties 98 – 112

References 2-6 are all of research published in peer-reviewed journals.

4. Details of the impact

4.1 Policy-makers nationally and internationally

Mead's research has contributed to policy debates, started to shape developments and influenced policy pronouncements by official bodies and institutions.

His research (and formal evidence) has informed both the most recent OSCE guidelines on peaceful assembly – the most authoritative "soft law" standards on the scope of the right at European level – and the JCHR in its two reports on protest and policing in 2008/9 (sources 5(a)-(b)). For example, his argument that there should be a limited/qualified right of public access to quasi-public land (references 3.1 pp.131-136 & p.420 and references 3.6) features in the 1st JCHR report (source 5(a)) and forms one of its conclusions (para 68). That report also features other aspects of his research and submissions: its conclusions on the need to protect peaceful albeit disruptive/inconvenient protest (para 148) and the need to be wary of conflating terrorism and protest (para 93). The second report features his views on *Austin* (references 3.5) and *Wood* (references 3.1 pp. 376-8) His analysis of *Austin* can also be seen in the 2010 OSCE/ODIHR (Office for Democratic Integration and Human Rights) *Venice Commission Guidelines on Peaceful Assembly* (2nd ed). Furthermore, the *Guidelines* conclusion on blanket bans and legal restrictions (para 43) cites Mead's view on proportionality in his book (references 3.1 pp.101-2).

Mead met senior officials in the Home Office Public Order Unit about reform of protest law (Dec 2010). The Coalition agreement included a commitment to "restore the right of non-violent protest". One early change has been reform of the laws limiting protest around Westminster, (Police Reform and Social Responsibility Act 2011, s.141) heavily criticised in his book (references 3.1 pp.146-161) and discussed at his Home Office meeting.

4.2 Practitioners and end-users nationally and internationally

Mead's research has been drawn upon by those implementing or "dealing" with the law.

Mead's research has featured before both the UK and New Zealand Supreme Courts: (sources 5(d)-(e)). Material in his article on *Ollinger* (references 3.4) was used by counsel for the defendant in *Morse v Police* [2011] NZSC 45. More recently, the Supreme Court gave leave to appeal on a point of law of general importance in *Richardson v DPP* [2012] EWHC 1238 (Admin) in part because Mead's research – that arrests for aggravated trespass are more widespread than

appears from the few reported cases (references 3.1 p.416) – was relied on during the application (source 5(e)). His research that we should be wary of labelling protesters as domestic terrorists, drawn upon by the JCHR (source 5(a) para 87), also forms part of the judgment in the ECHR decision in *Gillan v UK*: see (source 5(g)).

Mead was consulted by the McGill Association of University Teachers to assist draft its response to a draft university protocol on Governance, Protest and Security (arising from student sit-ins and protests): (source 5(h)). He was invited as a keynote speaker at McGill's "open forum academic symposium" in 2012 on protest, free speech and dissent. The views he expressed there, drawn from his book (references 3.1 pp.306-310, 417-418) on the need to distinguish legitimate disruptive protest from unlawful disruptive direct action, were referred to in the final report (by Dean Manfredi): "David Mead ... characterized acceptable disruption as short-lived and incidental. Mead's characterization provides a way of thinking about the problem that might assist further deliberations within the University." (source 5(h)).

4.3 Interest groups nationally and internationally

Mead's research has changed organisations' understanding and awareness and contributed to democratic participation by shaping activists' knowledge have of the legal framework.

In February 2011, he gave a paper at "The shrinking democratic space" at the Belgian Parliament co-organised by Greenpeace and Amnesty International. In March 2011 he was a panel member for a two-day seminar "Public participation and peaceful protest" at the Danish Human Rights Institute in Copenhagen, organised by Greenpeace and Civicus, the civil society NGO. His book (references 3.1) has helped to inform Greenpeace's position (source 5(i)) in various legal cases; his participation at the conferences helped improve Greenpeace's position in Danish society significantly and his "early recognition of the value of the 2012 Dutch ruling in *Shell v Greenpeace NL and Greenpeace International* [see references 3.2 p.118] for the right to peaceful protest has helped solidify best practices in this field".

Mead's research has led to providing advice and assistance to activists and groups such as his expert evidence on the functional value of peaceful protest before the court in the Occupy LSX case *City of London v Samede* [2012] EWHC 34 (source 5(f)).

5. Sources to corroborate the impact

- a. Various footnoted references and acknowledgements in *Demonstrating Respect for Rights: a Human Rights Approach to Policing Protest* (JCHR 7th report session 2008/9 HL 47-1;HC 320-1)
- para 57 (ev 171) evidence on pre-emptive policing
 - para 58 (ev 169) evidence on quasi public land
 - para 61 (ev 169) evidence on the state's role to facilitate protest
 - para 70 evidence on balance of rights and on order maintenance
 - para 80 (ev 171) evidence on s.5 of the Public Order act 1986
 - para 87 evidence on anti terrorism powers

Various footnoted references and acknowledgements in *Demonstrating Respect for Rights - a Follow Up* (JCHR 22nd report of session 2008/9 HL paper 141 HC paper 522)

- para 18 (on *Austin* ref 3.5) and para 56 (on *Wood v MPC*, ref 3.1, pp.376-8)

- b. Various footnoted references and acknowledgements in the OSCE/ODIHR *Venice Commission Guidelines on Peaceful Assembly* (2nd ed) 2010 at <http://www.osce.org/node/73405>
- f/n 41 referring to 2007 EHRLR article (ref 3.4 above)
 - f/n 87 & 172 referring to Mead's book (ref 3.1 pp.101-2 and pp104-5) on proportionality
 - f/n 135 referring to article on *Austin* (ref 3.5 above)

- c. EHRC *Annual Human Rights Review 2012* (March 2012) named contributor (p.455):

<http://www.equalityhumanrights.com/human-rights/our-human-rights-work/human-rights-review/the-review/>

- d. New Zealand Supreme Court (hearing 5/10/10 transcript) *Morse v Police* <http://www.nzlii.org/nz/other/NZSCTrans/2010/24.html> - flag burning
- e. Supreme Court papers: application for leave to appeal in *Richardson v DPP* [2012] EWHC 1238 (Admin) (UKSC 2012/0198)
- f. *City of London v Samede* [2012] EWHC 34 QB Lindblom J at [83]: expert evidence discussed
- g. The views in para 87 of the 1st JCHR report (a. above) - that the use of anti-terrorism legislation to police protests/protestors debases the very real threat terrorists are capable of posing to us all- quoted with approval in *Gillan and Quinton v UK* [2010] 50 EHRR 45 at para 47
- h. Correspondence with Prof Daniel Cere (McGill AUT) and “*Open Forum*” on campus protest - final report” by Professor Christopher Manfredi, Dean of Arts & Humanities, McGill University available via <http://www.mcgill.ca/newsroom/channels/news/administration-accepts-manfredi-recommendations-218605> (p.25) and draft Operating Procedures (Jan 2013) available here <http://blogs.mcgill.ca/values/>.
- i. Email from Jasper Teulings, Legal Counsel Greenpeace International (26th April 2013).