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Protesting and surviving - the state we're in, by Tim Malyon

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NEW STATESMAN & SOCIETY

Protesting and surviving

The state we're in

Begin with the conclusion: "You cannot legislate against protest." Inspector Jim MacBeth runs Bicester police's Special Hunt Squad. During the 1993/94 and 1994/95 hunting seasons the squad made no arrests, despite the local Bicester and Whaddon Chase Hunt being regularly sabbed. MacBeth is described by Paul Davis, former campaigns director for the Hunt Saboteurs Association (HSA) as "very good at his job. Over the course of several seasons he has not only saved the taxpayer thousands, but considerably reduced tension at the hunt and freed up valuable police resources for fighting crime". MacBeth obviously respects many of the hunt saboteurs he has encountered. "If a fox gets caught, I've seen them cry, because they care. We as police officers should never suppress or oppress them. We should facilitate their voice being heard."

MacBeth established a special hunt squad at Bicester: himself, a sergeant and eight other officers. Members of the hunt and the hunt sabs were invited to lecture to the squad on what they did and why. A couple of days before a hunt, the hunt sabs would inform MacBeth whether they were coming, and how many. "The HSA never turned up unannounced. If they said no, we wouldn't police it." If yes, the special squad would "walk with the sabs" throughout the hunting day, allowing them to spray citronella to mask the scent and blow hunting horns to confuse the hounds. The sabs weren't permitted to go among the hounds, lure them on to roads or go too close to the hunt. "Sabs were as much at risk from hunt followers as hunts from the sabs. Before this the hunt had started employing stewards. I'd put the word stewards in inverted commas. Thugs is probably too strong a word. They were there to prevent sabs doing anything. We were there purely to prevent a breach of the peace."

Paul Davis praises Bicester police's tactics. "They don't stand by and watch bodies being carried out of the field. Some hunts like the Bicester don't like it. They're finding it a shock dealing with impartial police." For his part, Inspector MacBeth is no fan of the aggravated trespass provision of the Criminal Justice Act (CJA), devised by Michael Howard specifically to deal with hunt saboteurs. And his methods are the exception. Up to May 1995 over 90 per cent of people arrested for aggravated trespass were hunt saboteurs. The offence is committed if somebody trespasses on open land and does anything to obstruct or disrupt a lawful activity, or intimidate those carrying out the activity. Blowing a hunting horn or spraying citronella could both be disruption. Inspector MacBeth again: "Hunting landowners have often told us to arrest someone for aggravated trespass and we have said, 'it's a power, not a duty.' We have no intention of enforcing our powers under the new act unless we have to. If we were to act against every instance of aggravated trespass or illegal encampment, we wouldn't have the resources to provide good cover on other policing duties. The way we were dealing with the hunt situation before, we had sufficient powers, not perfect, but workable. Pre-CJA the horn blowing was not illegal as such. The aggravated trespass law has made our job with hunting almost unworkable by using a sledgehammer to crack a nut."

It is proving an unwieldy sledgehammer. According to the HSA in the 1994/95 hunting season, of 154 people arrested or summoned under the CJA, 11 have been convicted, one bound over. Sixty-seven cases were dropped before reaching court - a success rate of 7.1 per cent. Several of the guilty findings have been manifestly unjust, such as Michelle Wynn, arrested while walking back to her van after refusing to hand a hunting horn to a policeman. A man standing near her had blown the horn then passed it to her when he was arrested. "I don't even know how to blow a hunting horn," said Michelle.

Both Davis and the Advisory Service for Squatters (ASS) are critical of some sections of the press, and political opposition to the Criminal Justice Bill for talking it up too much, suggesting the Bill would stop sabbing or squatting by making those activities illegal. "The effect has been to make people think that squatting is illegal, a criminal offence," says ASS. "This misinformation has had a big effect. I know it has stopped some people squatting. The numbers calling us went down, we got much less busy. Now the word is going out and we're getting busier again, especially outside London. I think the fear has also changed the

Andrew Testa

nature of squatting. So more people are squatting in large groups in bigger buildings."

Paradoxically the CJA's reputation travelling before it may have had more effect on squatting than its actual implementation. New powers to stop squatters occupying homes where people were already living, were central to the propaganda behind the Bill. Such powers already existed under the Criminal Law Act 1977 - the CJA merely extended them. Squatters didn't previously, and don't now, take over private, occupied homes, period. So ASS has not heard of the new powers being used. The other central plank of anti-squatting legislation in the CJA is the Interim Possession Order (IPO), a fast-track method of gaining possession, with a minimum of 48-hours' notice before a hearing, and 24 hours to get out once the possession order is granted. ASS has helped contest more than 20 IPOs and won all the cases save one. In England and Wales there have been 345 applications for IPOs, of which 168 have been granted. This pattern may well alter as property owners become more conversant with IPO court procedures.

Squatting continues, although "security" has deteriorated and undergone a rapid meaning-reversal. "Security" tried to force entry into Hackney Magistrates Court, squatted this February, by pickaxing and blowtorching their way through a door. It is no longer an offence for a resident or tenant or their agents to use force to gain entry to their property if a squatter refuses to leave on being shown the correct documentation. But Hackney Magistrates Court is not a residential property, so is not included in this licence for violence, and security had no possession order, interim or otherwise. The police arrived. Security walked away, despite having committed a serious offence under Section 6 of the Criminal Law Act 1977. Nobody was charged. The court building had been squatted as emergency accommodation for homeless asylum-seekers.

Recent environmental protests have given rise to some very creative legal work. Mike Schwartz from Bindmans acted for Greenpeace in their court victory at Sellafield - which could have a considerable impact on the Newbury protest. In April 1995, a group of Greenpeace protesters "affixed themselves to a railway track" that was to carry an empty irradiated fuel flask. They were charged with aggravated trespass under the CJA. The offence of aggravated trespass must involve disruption or obstruction of a lawful activity. That crucial word "lawful" enabled Greenpeace's defence to demand British Nuclear Fuels Limited's records in relation to the flask. These showed that BNFL was not fulfilling all its health and safety requirements, so was acting unlawfully. The protesters were found "not guilty". Mike Schwartz is working on a similar defence for those prosecuted for aggravated trespass at Newbury. "We can directly apply the Greenpeace case principles to Newbury. If the prosecution can't show that site clearance complied with health and safety regulations, that could amount to a criminal offence. We'll be asking all sorts of difficult questions of all sorts of embarrassed people." Thanks to "lawful", the aggravated trespass law gives environmentalists a lever to investigate activities which hitherto have remained secret. Numerous blatant breaches of health and safety have already been reported at Newbury, involving the felling of trees dangerously near to protesters, police and security, as well as gross lack of training for security guards and lethal use of chain-saws. "Defecting" security guards have already agreed to give evidence for the defence. The trials promise to be interesting.

One of the many new powers bestowed on the police by the CJA is the ability to impose bail conditions. Police and Newbury magistrates are now both imposing bail conditions "which are much heavier than one would expect in parallel, non-political circumstances", according to Schwartz. Conditions like exclusion from the bypass site and signing on every day at the place of residence, are clearly designed to keep people away from the protest. Schwartz had some success at the M65 and M11 protests in appealing unjust bail conditions to the High Court and intends to do the same at Newbury. According to legal adviser, Lorna Johnson, "two custody sergeants have now admitted to me that these bail conditions are force guidelines between the four police forces involved in Newbury. It's basically internal exile". Police at Newbury are also "upping the ante" in Schwartz's words, by charging people under Section 241 of the Trade Union & Labour Relations Act 1992. Aggravated trespass doesn't apply to public highways. Protesters who lock themselves onto contractors' vehicles on the road would normally be charged with obstruction of the highway. This offence does not carry a prison sentence, whereas Section 241 carries a sentence of six months.

Mike Schwartz is also critical of Newbury magistrates' clerks who have refused several applications for legal aid to defend aggravated trespass cases. "Some of the clerks of the court are taking a political view of legal aid," he charges. Aggravated trespass carries a maximum sentence of three months' imprisonment. "In

any other non-political context, you'd get legal aid."

There are now some 15 camps along the site of the Newbury bypass, which have claimed "squatters' rights" under Section 6 of the Criminal Law Act 1977. This forbids entry by "using or threatening violence". The Department of Transport needs to obtain possession orders to evict these camps, although people have been dragged out of their benders and camps by "security" and been illegally evicted with police officers standing by, according to a number of witnesses. The High Court has granted some eviction notices, which are now being appealed. John Dunkley from Earth Rights, a new environmental legal practice, argues that "Compulsory Purchase Orders are invalid because an environmental impact assessment has not been carried out. The Department of Transport is not the landowner." The Department of Transport says that no impact assessment was required because the project was in the pipeline before environmental assessment requirements were included in the Highways Act 1980. If Dunkley's view prevails in the Appeal Court, the Department of Transport will be unable to evict the camps.

Environmental protection legislation is also slowing contractors' work. Under the Protection Of Badgers Act 1992 work must be stopped on two sites until July when English Nature may issue licences to move the sets. The Wildlife and Countryside Act should stop contractors working anywhere near birds' nests from the end of March until July. And the discovery near the site of Desmoulin's whorl snail, a protected species, underlines the importance of an environmental impact assessment being carried out. According to David Henshilwood from English Nature, "no work is anticipated in the particular habitat near the Kennet and Lambourn rivers which the snails might occupy".

Section 70 of the CJA was designed specifically to deal with public order situations around Stonehenge, although it has wider applications. Under certain circumstances "the chief officer of police" may apply to the district council for an order "prohibiting for a specified period the holding of trespassory assemblies in the district or part of it". This was invoked last summer at Stonehenge on the anniversary of "The Battle of the Beanfield". Richard Lloyd and Dr Margaret Jones joined a group of people peacefully standing on the highway near the monument. They were arrested. Judge Maclaren Webster QC found that if people are involved in peaceful and non-obstructive gatherings on public land it does not constitute trespass and therefore they cannot be guilty of trespassory assembly. "A right to use the highway for lawful demonstration is just that and provided it remains lawful there can be no trespass." The decision is to be appealed. Solicitors, Douglas and Partners, for the defence commented: "If this case stands, it effectively destroys the trespassory assembly provisions of the Criminal Justice & Public Order Act."

Tracy Wales is a traveller. Her one-year-old daughter, Chelsea, has a suspected fused skull, which means that her brain can't grow. It is a potentially life-threatening condition. On 10 February 1995 Wealden District Council in East Sussex told all occupants of Phie Forest Garden, including Tracy and her daughter, to move on. On 22 March Lewes and Crowborough magistrates made an order for removal of vehicles from the site under Section 78 of the CJA. This order was never carried out, not against Tracy Wales nor against Lisa Griffiths, who was also living on the site with a small child. Instead, in July 1995 the case came before Mr Justice Sedley at the Royal Courts of Justice in the Strand. In a landmark judgment the former human rights QC quashed the eviction order because the council had failed to take into account "considerations of common humanity, none of which can properly be ignored when dealing with one of the most fundamental human needs, the need for shelter with at least a modicum of security". Tracy's solicitor, Ravi Low-Beer from The Public Law Project, called the decision "a very humane judgment". Wealden District Council hasn't appealed, which suggests the judgement is also legally very sound. Needless to say, Mr Justice Sedley has come in for a barrage of criticism from the *Daily Express* and *Daily Mail*.

The judge ruled that councils must take into account the circumstances of travellers, in particular obligations under Part III of The Children Act 1989 (Local Authority Support for Children and Families) and Part III of the Housing Act 1985 (Housing the Homeless) before deciding to evict. Since then, according to Steve Staines from The Friends, Families and Travellers (FFT) Support Group, "we have no evidence that councils are using their powers to evict under the CJA. What is more, Section 61 may be inoperative in the long run". This is the CJA section which gives police powers to evict travellers. "Police are duty-bound to investigate travellers' circumstances before evicting. This is partly why police are not operating Section 61, unless there's a flagrant abuse of private property." Brighton Council has just voted for a policy of traveller toleration and temporary sites around town to be used in rotation. South Somerset and Mendip District Councils, as well as Somerset County Council have all set up working parties to consider the problem. Concludes Steve Staines: "A judge has stood up and said: 'These people require considerations of common humanity.' That's changed a lot of people's ideas about travellers."

It's a victory, but one which follows years of systematic traveller oppression. And the victory is only partial. Oppressive evictions which disregard all considerations of common humanity will inevitably continue unreported to the press or lawyers, until proper site provision exists for travellers. When the government abolished local authorities' duties to provide traveller sites, and introduced draconian legislation to evict from unauthorised sites, it made the ludicrous prediction that private sites would make up the shortfall. Private sites require money for their purchase and planning permission. About 80 per cent of all non-traveller planning applications are successful. Last year just 4 per cent of traveller planning applications for sites were successful. And when a planning inspector did grant planning permission, albeit temporary, overturning the district council decision, Secretary of State for the Environment John Gummer "called in" the application and overruled his own inspector. This involved Tinker's Bubble, 40 acres of land near Yeovil with benders erected among the trees. The planning inspector wanted to give three years' temporary planning permission. Since then Gummer has called in three more planning applications, for a site near Guildford, another one, Kingshill, near Shepton Mallet, and for "Tipi Valley" in Wales, the oldest of all low-impact settlements in the UK. "Private site accommodation has been totally frustrated by government and local government planning policy and prejudice," commented Steve Staines.

The European Court of Human Rights may have a remedy. June Buckley is a gypsy who lives on her own land. She has been refused planning permission and taken her case to the European Court. Article 8 of the

Nick Cobbing

Above: Tinkers Bubble collective. See page 17
Right: Exodus. See page 11

European Convention on Human Rights states that "everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as ... is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others". The court decision is expected soon. If it goes the right way it may start to break down, in Steve Staines' words, "the institutional prejudice present in our planning system against a nomadic minority". Despite this, travellers have sadly lost one of their crucial social and economic mainstays, the free festival circuit, which was harassed out of existence before even the CJA came into force by breach of the peace legislation, prejudiced licensing regulations, confiscation of vehicles, harassment under the Misuse of Drugs Act and widespread road closures.

With the failure of the criminal law to outlaw protest, the civil law has been invoked in several instances. At Twyford, road contractors tried to sue protesters for damages, only to withdraw the action with defendants ordered to pay £500 towards legal costs. They haven't. At Brightlingsea the animal exporter threatened to sue protesters for damages, only to drop the case. Friends of The Earth head office are being extremely careful at Newbury not to be involved in direct action but to concentrate their energies on providing legal observers and campaigning, partly to avoid injunctions or writs for damages. And in Luton, the Exodus Dance and Housing Collective now face an injunction to stop their parties.

To date the only time CJA powers in relation to raves have been used was last July to stop "The Mother". A large free festival was attempted on open ground outside Corby, as well as at Smeatharpe Airfield in Devon. Both events were stopped due to advance police knowledge of the sites. CJA legislation permitting police to turn people away from the sites, was invoked although police have been turning people away from sites for many years now without needing this legislation. During the miners' strike police used powers under the Road Traffic Act 1972 to stop vehicles, and the common law power "to prevent a breach of the peace", backed up by threats of obstruction of a police officer, to turn people away. In Nottinghamshire alone, some 164,508 "presumed pickets" were turned back during the strike's first 27 weeks using this lethal legal cocktail.

No charges have yet come to court as a result of "The Mother". One sound system had its equipment seized and members were charged under "anti-rave" provisions of the CJA. The cases have not yet come to court. Several alleged "organisers" were raided at their homes and charged with "conspiracy to cause a public nuisance", charges which were dropped in February. Solicitor, Peter Silver, acted for some of the defendants. "If there was a conspiracy, it was 'not to cause a public nuisance', because a site was chosen as far from anywhere as possible."

The CJA powers in relation to raves have had an effect. There are still free parties being held, although, according to Michelle Poole of the Advance Party, "some sound systems have been warned off and are just playing clubs now". Parties also tend to be smaller, the exception being the Exodus collective, who throughout last summer and this winter have been holding events attracting 3,000 and more, in deserted quarries and warehouses. Bedfordshire police, like Inspector MacBeth, see the CJA as conferring "powers, not duties", and have stayed away. That doesn't mean they always will. And warehouses are not covered by the CJA's powers in relation to raves.

Ironically, Labour-controlled Luton Borough Council, along with Mid and South Bedfordshire councils have taken out an injunction against some leading Exodus members, including the spokesperson, Glenn Jenkins, going beyond the CJA's powers in relation to raves. Jenkins is barred by the injunction from attending any unlicensed parties in Luton, South and Mid Bedfordshire, and even speaking about them in some circumstances. DJs may wear masks at future parties to avoid the possibility of injunction and prison for contempt of court. Respected civil rights solicitors, BM Birnberg and Co, acting unpaid for Exodus, have accused Luton Borough Council of "seeking to circumvent the criminal law by in effect criminalising activities which even parliament has not legislated as criminal offences."

The only way to curb such repressive infringements on civil liberties is a suitably wide Bill of Rights. Liz Parratt, campaigns officer for Liberty, underlines the point. "It's high time we had a Bill of Rights to make the right to peaceful protest and free assembly a reality rather than a national fantasy." The CJA needs abolishing, in particular the end of the right to an uncompromising silence, and Part V, "Public Order: Collective Trespass Or Nuisance On Land". It is bad law and profoundly oppressive. That's not enough. Other tools of legal oppression remain, such as the Public Order Act 1986, police powers for preventing a breach of the peace, the Trade Union & Labour Relations Act, and civil injunctions, to mention but a few - all often used to repress peaceful protest. The miners' strike and "The Battle of the Beanfield" both happened before the CJA, before the Public Order Act 1986, before the Trade Union & Labour Relations Act. The police weren't short of powers then. What's interesting about the present wave of so-called "single-issue politics" is the commitment of most participants to civil-liberties issues. A Bill of Rights is Labour party policy, on paper. What is needed now is a clear timetable commitment. Once in office, parties of all hues tend to drag their heels in introducing civil liberties legislation. Inspector MacBeth is right. "You cannot legislate against protest." So, Tony, give us a date. Let's hear you now.