RIOTS IN THE UK PUBLIC ORDER LAW IN THE UK

Coverage of the recent UK riots is extensive. Diagnoses and reasons offered for the disorder are many. Some are even in conflict with the other. However in contrast, the unanimity on the response of the Police to the unraveling anarchy and rioting is significant. The Economist (August 2011 p 10, 39 – 41) say that the Police were 'unable to cope' 'were unable to respond quickly' 'police were caught flat-footed and unable to ensure order' 'were too soft' 'willingness of armoured police to stand back while shops were pillaged and torched by marauding youth' 'fearful of being charged with overreacting'. The Newsweek (August 22&29 p. 9) describes the response as 'failure of the police'; that 'their leaders have been slow, reactive and timid'. These several reasons for the breakdown of peace and order do not account for the 'failure of the police'. The legal environment attending police action at this time, unlike before, may account for the failure.

Earlier it was said: "One of the prime duties of the police is the maintenance of public order….The common law powers are preventive in nature and are available to the police (and to the citizen)…. The freedom to protest is circumscribed by the preventive power of the police and by statutory offences as willful obstruction of the highway. Despite the terms of the ECHR, Article 11, there are no rights to assemble and protest. These are residual freedoms which exist only to the extent that they are not affected by any positive law as obstruction of the highway"[1].

The UK court in *Thomas*[2] asserted: "I think that there is quite sufficient ground for the proposition that it is part of the preventive power and, therefore, part of the preventive duty, of the police, in cases where there are such reasonable grounds of apprehension...."; "It goes without saying that the powers and duties of the police are directed, not to the interests of the police, but to the protection and welfare of the public". The case of *Piddington*[3] (1961) held: "I think that a police officer charged with the duty of preserving the Queen's peace must be left to take such steps on the evidence before him he thinks are proper…Finally, I would like to say that all these matters are so much matters of degree that I would hesitate, except on the clearest evidence, to interfere …"

Preventive action against breach of peace and public order is not circumscribed. In *Howell*[4] (1982) court recognized 'keeping the peace in this country in the latter half of the 20th century presents formidable problems which bear upon the *evolving process* of the development of this breach of the common law'. The Economist notes (p39) the march to the police station 'started peacefully but turned nasty', the likes of Tottenham was anticipated by *Howell* in 1982! The sting is in the tail. The legal maxim, *sic utere tuo ut alienum non laedas*, lurks beneath. The UK common law had for long fashioned police action. Police action has for long involved an expertise, a capacity and status to guard against the untoward. Griffith CJ said, "[N]ow the powers of constable, qua peace officer, whether conferred by common law or statute law, are exercised by virtue of his office……A constable, when acting as a peace officer, is not exercising a delegated authority, but an original authority"[5]. Viscount Simmonds said "the constable is a holder of a public officer serving the state. His authority is original, not delegated, and is exercised at his own discretion by virtue of his office…"[6] Lord Denning in the same strain said " in carrying out their duty of enforcing the law, the

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[1] Marston John and Ward Richard, in 'Constitutional and Administrative Law', [1991] p269, 128 Long Acre, London.
[2] Thomas v Sawkins [1935] QB 249; [1935] All ER Rep 655.
[3] Piddington v Bates [1961] 1 WLR 180; [1960] 3 All ER 600.
[4] R v Howell [1982] QB 416; [1981] 3 All ER 383.
[5] Enever v King (1906) 9 CO:REP 65b, 68b.
[6] AG for New South Wales v Perpetual Trustee Co. Ltd. (1955) AC 457 (PC)

police have a discretion with which we will not interfere. There might, however, be extreme cases in which he was not carrying out his duty. And then we would"[7].

The line of authority is clear. Judicial injunction to police is firm and explicit. Police cannot then be caught flat-footed, willing to stand back while shops were pillaged and torched by marauding youth, fearful of being charged with overreacting.

The 1998 UK Human Rights Law changed the legal setting for police action dealing with public order. The even keel ran into some turbulence with later law. In Jane Laporte[8] HOL held there was a 'constitutional shift, in public order law. The applicant and others, some armed with offensive articles, were turned back from Lechlade before reaching Faifield the place of demonstration by Police to prevent a breach of peace reasonably apprehended. The applicant petitioned denial of her right to freedom of expression and assembly. The finding was that Police action was unlawful because they were not prescribed by law and was disproportionate, premature and indiscriminate, since there was no imminent threat of breach of peace. These determinations adverse to Police did not take into account that Police had secured and upheld rights of nearly 5000 persons demonstrating at Fairfield in the same connection. Police action at Lechlade can be disproportionate or indiscriminate taken by itself, not in the fuller context of that at Fairfield.

Thus in Austin and Saxby case – March 2005, when over 3000 persons were corralled off by Police at Oxford circus, as a matter of the bounden preventive duty of Police, disproportionate premature and indiscriminate action was not alleged. Action by police at Oxford Circus was manifestly 'disproportionate, premature and indiscriminate, by any measure of judgment. The court however found there was real risk to peace and order to justify Police action. An issue of 'imminent' breach of peace, narrowly construed as in the Laporte case, did not commend itself for decision in the Austin and Saxby case.

Hindsight availed the Laporte to determine when breach of peace is 'imminent'. Austin and Saxby concluded prospectively. Passengers at Lechlade prudently did not want a confrontation with police, if they reserved intention for Fairfield. Thus the use of the metaphor 'The sheep as well as the goats' in that case, was feasible only in retrospect. Mr.Lambert's burden was to figure out prospectively, wolves which would come in sheep's clothing. He had not the benefit of hindsight. The context at Lechlade for police action was clear to the police.

A shift then of tectonic proportions from the common law basis to a constitutional 'shift' of principle places Police somewhere along the fault lines in the legal rift; a situation indeterminate to generate effective police action.

The effect of these legal changes attending police action to maintain public order and peace is therefore a pertinent question. Reasons for the anarchy and riots in the UK are barely to the point. Effective police action in changing situations is the need. Police can be demoralized by the law apart from many other means. Police are too discreet to plead such legal considerations in mitigation of their 'failure'.

Frank de Silva
Colombo Sri Lanka
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[7] Blackburn (No 3) (1973) QB 241.
[8] Laporte v. Chief Constable of Gloucestershire [2006] UK House of Lords 55, 13th November 2006.