

Protest as harassment

If you want to know how a leaflet could be seen as a criminal weapon, take a look at the new crime bill

It was the greatest legal victory against corporate power in living memory. Last week, two penniless activists, Dave Morris and Helen Steel, persuaded the European court of human rights that Britain's libel laws, under which they had been sued by McDonald's, had denied them their right of free speech. The law will probably have to be changed, depriving the rich and powerful of their most effective means of stifling public protest. So why aren't they hopping mad? The company that sued Dave and Helen will say only that "the world has moved on ... and so has McDonald's". The Confederation of British Industry, so quick to denounce legal rulings it doesn't like, hasn't uttered a word.

They don't care, and they don't need to. You can see why by reading the serious organised crime and police bill, which has now passed through the Commons for the third time. What civil law once gave them, criminal law now offers instead.

There has been a great deal of disquiet about this bill, but not because of its effects on protest. The public complaints have concentrated on the clause banning "hatred against persons on religious grounds". This is important, but not nearly as important as the parts almost everyone has missed. Once this bill becomes law, it could be used to ban people from handing out leaflets to customers entering McDonald's, whether their contents are defamatory or not.

Section 121 of the bill prohibits people from "pursuing a course of conduct which involves harassment of two or more persons" in order "to persuade any person ... not to do something that he is entitled or required to do, or to do something that he is not under any

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obligation to do”. Harassment, the bill explains, can involve “conduct on at least one occasion”, “in relation to two or more persons”. In other words, you need only approach someone once to be considered to be harassing them, as long as you have also approached someone else in the same manner.

The law is left wide open: there is nothing in it to prevent a company seeking an injunction and damages against someone who has handed out leaflets to two of its customers. To demonstrate harassment, it needs to show that the protester’s conduct has caused its customers “alarm or distress”; but again the law grants as much scope as it could ask for. This bill, like the 1997 Protection from Harassment Act, fails to distinguish between the manner in which information might be presented and the information itself. If you stood outside a chemist’s shop, telling people that one of the drugs they were using caused mutations in human foetuses, you would be alarming or distressing them even if you behaved with the greatest courtesy.

The bill goes on (sections 122 and 123) to redefine harassing someone in his or her home in such a way as to permit the police to ban all protest in a residential area. Under the bill you don’t have to go knocking on someone’s door to merit a year inside and a £2,500 fine. You merely need to represent to “another individual” (ie anyone) “in the vicinity” of someone else’s home “that he should not do something that he is entitled or required to do; or that he should do something that he is not under any obligation to do”. Which is, of course, the purpose of protest.

If you think these interpretations of the new bill are far-fetched, take a look at how existing laws have recently been used to scoop up peaceful protesters. All these examples involve animal rights protesters, but there is nothing to prevent other demonstrators from being treated in the same manner.

While the law has also been used to deal with genuine threats, in March last year a protester in Kent was arrested for sending polite emails to a drugs company, asking it not to work with the animal-testing service Huntingdon Life Sciences. Under current law, a “course of conduct” is established if you do something to one person twice: the police maintained that her emails, though courteous, constituted harassment as one person received two of them. In January 2004, another protester was arrested at a demonstration for displaying a picture of a dead cat on a poster. In September 2003, the police directed demonstrators against a circus in London to leave on the grounds that the circus people lived nearby (in their caravans), and were therefore being harassed in their homes. One protester, Lynn Sawyer, faces £205,000 costs after she failed to contest an injunction under the Protection from Harassment Act.”

The implications of sections 121-123 have been missed by most MPs and most of the press. (The alternative magazine Schnews is an exception.) In the Commons on February 7, the

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Home Office minister Caroline Flint insisted that “we do not intend those who legitimately leaflet against an organisation ... to be caught under the new offence”. But the Home Office claimed that neither the Protection from Harassment Act nor the 2000 Terrorism Act would be used against protesters, and both claims turn out to have been false. What counts is what the law says, not what ministers claim it says.

But these legal boulders, like the other repressive measures, have been cleverly hidden behind pebbles. The religious incitement law has become a marvellous distraction from the greater dangers in the bill. The harassment provisions have been tangled up with the new sanctions against intimidation and threatening behaviour by animal rights protesters (sections 142-146). The measures that the government claims are meant to stop fake butlers breaking into royal palaces and to prevent the lone anti-war protester Brian Haw from camping on the pavement in Parliament Square (125-135) also have the effect of banning any spontaneous protest outside parliament or in Trafalgar Square, and of permitting the home secretary to ban demonstrations in places “designated” by him to be “in the interests of national security”. Which means they will be used to prevent protests at airbases, arms exhibitions, government buildings and anywhere else of symbolic or practical importance.

Add these measures to those enshrined in the 1986 Public Order Act, the 1992 Trade Union Act, the 1994 Criminal Justice Act, the 1997 Protection from Harassment Act, the 2000 Terrorism Act, the 2001 Anti-Terrorism, Crime and Security Act, the 2001 Criminal Justice and Police Act, the 2003 Anti-Social Behaviour Act and the 2004 Civil Contingencies Act, and you find that there is no kind of protest, of any efficacy whatsoever, that the police or courts will not be able to prevent and punish if they choose. And the last nail is now being driven down without serious public or parliamentary debate.

Do we surrender our freedoms so lightly? Do we turn our backs on those who were stretched and flayed and disembowelled to obtain them? Or is there another Dave Morris and another Helen Steel prepared to fight – for the rest of their lives if necessary – for the freedom to tell the powerful that they are treading on our toes?