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Blackshirts and White Wigs: Reflections on Public Order Law and the Political Activism of the British Union of Fascists

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**Blackshirts and White Wigs: Reflections on Public Order Law and the Political
Activism of the British Union of Fascists**

by

Iain Christopher Edward Channing

A thesis submitted to Plymouth University in
Partial fulfilment for the degree of

Doctor of Philosophy

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Abstract

While domestic fascism within the United Kingdom has never critically challenged Parliamentary sovereignty, it has decisively disrupted public order since its roots were established in the inter-war political scene. The violence provoked by Sir Oswald Mosley's British Union of Fascists (BUF) was one of the stimulating factors behind the enactment of the Public Order Act 1936. This Act significantly strengthened the powers of the police to regulate or proscribe various forms of political activism.

This thesis analyses the legal responses of Parliament, the police and the judiciary to interwar British fascism. In addition, by analysing the legal responses to public disorder from before and after the 1930s, it positions the BUF within their wider historical context which enables this thesis to assess and evaluate consistencies and discrepancies within the application of the law. By enhancing the historical contextualisation of the period with a critical legal lens, the principal forms of fascist propaganda are evaluated, including public processions, public meetings and the wearing of political uniform.

It is argued that the application of a historico-legal methodology challenges the perception that the authorities were inherently politically biased. This thesis explores alternative factors which explain why the responses of the legal authorities appeared inconsistent in their approach to the far-Right and the far-Left. In order to critically analyse the police's decision making process when monitoring political activism, the limitations of public order law and the nature of police discretion itself become fundamental components which offer a more balanced explanation for the appearance of political partiality within the police force.

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Incitement to Mutiny Act 1797
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Police and Criminal Evidence Act (PACE) 1984
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Terrorism Act 2006
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Abbreviations

BF	British Fascisti
BUF	British Union of Fascists
CND	Campaign for Nuclear Disarmament
CPGB	Communist Party of Great Britain
ECHR	European Convention on Human Rights
EDL	English Defence League
HRA	Human Rights Act
IFL	Imperial Fascist League
ILP	Independent Labour Party
KKK	Ku Klux Klan
LCC	London County Council
LEL	League of Empire Loyalists
NCCL	National Council for Civil Liberties
NUWM	National Unemployed Workers Movement
SCP	Social Credit Party
SDF	Social Democratic Federation
UM	Union Movement

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Author's Declaration

At no time during registration for the degree of Doctor of Philosophy has the author been registered for any other University award without prior agreement of the Graduate Committee.

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Relevant seminars and conferences were regularly attended at which work was often presented; external institutions were visited for consultation purposes and several papers prepared for publication.

Publications

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Signed.....

Date.....

Introduction

In short, there is nothing you or the members of the House of Commons can do to stop our practices... We know how to circumvent legal measures, and we have ample moneys and resources at our command to provide any further auxiliary legal machinery.¹

1) Fascism and the Law

The relationship between the British Union of Fascists (BUF) and the law has had a controversial history. Many modern historians and lawyers have accused legal authorities, such as Parliament, the police, and the judiciary, of political bias in favour of the fascists. In the inter-war period, contemporary politicians, Left-wing commentators and the National Council for Civil Liberties (NCCL) have also directed criticism towards the police, who they believed acted partially in favour of the fascists. In turn, fascist propaganda has accused the authorities of being anti-fascist, although understandably this cause has not been taken up by modern academic scholars. It is not the intention of this thesis to defend, or to offer legitimacy for fascist activity and propaganda, but to contextualise the legal responses to the provocation and public disorder which was instigated by the political methods deployed by the BUF. In order to address these responses, the activism of the Communist Party of Great Britain (CPGB) and anti-fascist movements are also examined. It is argued that the addition of a critical legal lens to the historical contextualisation of political extremism in 1930s Britain will offer an alternative explanation to the condemnation of the police, the Government, or the judiciary as being inherently politically biased.

The introductory quote from BUF political officer Richard Plathen's letter to the Home Secretary demonstrates how the fascist movements' leadership perceived their relationship with the law. The letter was sent unofficially, as the immediate sanction

¹ The National Archives (TNA), Home Office, HO 144/19070, letter from BUF political officer Richard Plathen to Home Secretary Sir John Gilmour. 22 Feb 1934.

from Sir Oswald Mosley could not be obtained, and it is very possible that, due to the confrontational approach of the letter, had Mosley been available it may never have been sent. As a result, it is now held in the Home Office files within the National Archive. The revealing feature of this letter is the self-assurance of the BUF to stay within the law and the confidence that they could obtain their political objectives by 'circumventing legal measures'. Indeed, this was a key characteristic of the BUF's political methods. They opposed Parliamentary democracy but aimed to reach power by operating within it, rather than any other revolutionary means. Mosley gave his members strict instructions to obey the law and the police. For example, it has been frequently documented that BUF members obeyed police orders to close public meetings when disorder was anticipated.² In the authorised history of the BUF, *We Marched with Mosley*, this point is reiterated by National Inspector Richard Bellamy that, 'the fascists intended not only to adhere strictly to the law but also to uphold lawful authority.'³ Yet, these actions do not justify other forms of BUF political violence, incitement to racial hatred and provocation. The fascists were also commonly accused of overt brutality at their political meetings.⁴ Blackshirt stewards frequently used heavy-handed tactics to eject interrupters from the premises. Even at meetings and processions held in public places, incidents of fighting and conflict with opponents tarnished their image of a movement that claimed to stand for law and order. In addition, the BUF's public processions frequently targeted Jewish communities, which triggered further conflict, and their militaristic uniform added to this provocation. Individual members also committed acts of violence away from official propaganda activities. This included physical assaults on political opponents

² Examples can be found in Chapter 2 regarding the BUF procession which resulted in the Battle of Cable Street and a meeting closed by police in Stockton-on-Tees.

³ R. R. Bellamy, *We Marched With Mosley: The Authorised History of the British Union of Fascists*, Black House Publishing Ltd (2013), p. 50.

⁴ This is documented in Chapter 4.

and Jews, as well as the vandalism of their property. Other fascist tactics which were also employed were not necessarily physically violent, but were still calculated to intimidate members of the local Jewish population. Daniel Charter, Labour MP for Bethnal Green North East, recalled:

I myself have seen groups of Fascists standing outside Jewish shops shouting at customers who were likely to go in, in order to prevent them from dealing at those shops; I have listened to groups of Fascists hurling insulting remarks at Jews; and only quite recently, travelling on the top of an omnibus, I had to listen to a group of 15 Fascists, accompanied by a Fascist officer in uniform, singing a most obscene song about Jews.⁵

Whilst recognising that this sub-culture of violence, racism and intimidation was prevalent in members of the movement, which further moulded their reputation for brutality and intolerance, this thesis is primarily concerned with the behaviour of BUF members on official party activity.

Today, the popular memory of the provocative activism of the BUF is frequently resurrected by the media, anti-fascist activists and politicians. In particular, the Battle of Cable Street has come to signify the decisive victory of the anti-fascists. In a debate on the 75th anniversary of Cable Street, Tower Hamlets Mayor Lutfur Rahman noted its significance.

This was a momentous day in the history of London's East End, when Oswald Mosley and his blackshirts were driven out of the then mainly Jewish area by demonstrators whose slogan was "They shall not pass!"⁶

Yet, this simplistic interpretation of Cable Street's significance neglects the intense BUF activity that continued in East London until the local elections in the spring of 1937. Perhaps the most significant legacy of Cable Street was the legislative response in the form of the Public Order Act 1936.⁷ The new powers

⁵ *HC Deb* 16 Nov 1936 vol 317 cc1385.

⁶ *The Guardian*, 3 Oct 2011.

⁷ However, the National Government had been considering and drafting public order legislation before this event, so although the provisions within the Public Order Act 1936 could not necessarily be

introduced in this Act significantly hindered the political movements of the extreme Left and Right. However, BUF activism continued until 1940 when the movement was proscribed, and they even experienced a wave in popularity with their anti-war campaign in the months either side of the outbreak of war in September 1939.⁸

There is a danger that the inaccurate recording of history provides false impressions of the past which are analogised with the present. Media coverage of the 75th anniversary of Cable Street frequently compared issues of the BUF to the current public order problems relating to the anti-Islamic street movement, the English Defence League (EDL).⁹ This parallel was also made by the Communities and Local Government Secretary, John Denham, who warned that the rise of far-Right activity in Muslim neighbourhoods echoed a return to the incendiary marches of Oswald Mosley's Blackshirts. While the ideological principle of this analogy was proven to be erroneous by historian David Cesarani, the practical comparisons from a public order standpoint are clearly evident.¹⁰ The new far-Right cause of anti-Islamism has replaced the interwar fascists' adoption of anti-Semitism, and their activism has frequently targeted Muslim and Jewish communities respectively. These confrontational tactics can be utilised to provoke a violent reaction from the communities they target. This subsequently fuels their propaganda, which could then depict their rivals as the aggressors and opponents of 'free speech' and democracy. Provoking large scale conflict also

considered as a knee-jerk reaction to 4 October, the disorder on that day did provide a significant cross-Party consensus that public order legislation was necessary. The previous drafts of public order legislation from 1932 and 1934 are examined in Chapter 3.

⁸ P. Catterall (ed), 'The Battle of Cable Street: Witness Seminar', *Contemporary Record*, (Summer 1994) Vol. 8 (1), p. 123.

⁹ *Ibid.* and *The Times*, 30 Sept 2011,

¹⁰ D. Cesarani, 'Remember Cable Street? Wrong Battle, Mate', *History and Policy* (2009) accessed at <http://www.historyandpolicy.org/papers/policy-paper-93.html> on 10 Jan 2011.

has the advantage of attracting national media attention which publicises their movement. In his analogy, Denham stated that, 'The tactic of trying to provoke a response in the hope of causing wider violence and mayhem is long established on the far-Right and among extremist groups.'¹¹ This explanation is too simplistic and overlooks the true value for targeting and scapegoating the communities of ethnic minorities. By creating friction and disorder where migrant residents live in close proximity to a predominantly indigenous populace, the far-Right aim is to manipulate and recruit from the white working class residents, by encouraging or creating community tension, based on fear, fabrication and ignorance of the 'foreign other'.

For the Blackshirts, anti-Semitism proved a valuable recruiting tool which was validated by their claim that it was the Jew who was the aggressor and not the fascist, who was defending British liberty. Convinced of this misplaced righteousness, many recent memoirs and recollections of interwar fascists still maintained that the disorder was caused by Jews and anti-fascists. In a witness seminar on Cable Street in 1991, historian Geoffrey Alderman asked former BUF member Ronald Webb if Mosley's anti-Jewish rhetoric affected him. Webb replied, 'Well, it seemed that the attacks come from the Jews in the first place.'¹² This version of events, which depicts the BUF as the innocent victims of political violence, is also consistent in the memoirs and autobiographies of Mosley, Jeffrey Hamm, John Charnley and Richard Bellamy, who all fail to acknowledge any fault in their own anti-Semitic activism and propagate the lawfulness of their

¹¹ *The Guardian*, 11 Sept 2009.

¹² Catterall, 'The Battle of Cable Street', p. 121.

own political activism.¹³ Therefore, some fundamental concepts of public order law need to be addressed before a legal examination of BUF activism is conducted.

2) Public Order and the Common Law: Definitions

In *Keeping the Peace*, David Williams stated that the law of public order was a compromise which sought to balance the ‘competing demands of freedom of speech and assembly on the one hand and the preservation of the Queen’s Peace on the other.’¹⁴ Historically, this compromise has repeatedly failed, resulting in a considerable catalogue of public disorder and riot. As ‘keepers of the peace’, the police and their tactics are intrinsically scrutinised by the media in any event of disorder. Diversely, effective public order policing does not attract the same attention. In this respect, Reicher *et al.* commented, ‘public order policing is a no-win situation.’¹⁵ The interplay between the law and police tactics is integral to this investigation of public order responses to political extremism in the 1930s. The wide common law powers at the discretion of the police are a controversial feature of the law of public order and resonate throughout this thesis. Important legal concepts therefore require definition.

2.1) The Breach of the Peace Doctrine

The breach of the peace doctrine empowers the police to make an arrest without warrant when such a breach is committed in their presence, or is reasonably

¹³ O. Mosley, *My Life*, Friends of Oswald Mosley (2006), downloaded from <http://www.oswaldmosley.com/downloads/My%20Life.pdf> on 15 April 2010; J. Hamm, *Action Replay*, (1983); Bellamy, *We Marched With Mosley*, J. Charnley, *Blackshirts and Roses*, Brockingday Publications (1990).

¹⁴ D. Williams, *Keeping the Peace: The Police and Public Order*, Hutchinson & Co Ltd (1967), p. 9.

¹⁵ S. Reicher, C. Stott, P. Cronin, O. Adang, (2004), ‘An integrated approach to crowd psychology and public order policing’, *Policing: An International Journal of Police Strategies & Management*, vol. 27, iss. 4, pp. 558-572. p. 559.

anticipated. However, breach of the peace is not a substantive criminal offence in England and Wales, although it is recognised as a crime in Scotland. Under this ill-defined doctrine, the police have a duty to preserve the peace and are provided with an arrest power which can be used when no substantive criminal offence has taken place. In the use of this power as a preventative measure, the police must demonstrate to the court that their actions were justified by the facts as well as in theory. As the nature of the breach of the peace doctrine is broad, and largely subjective, the discretion of the police officer and the interpretation of the judge do not necessarily harmonize. Williams has scrutinized the basic foundation of the doctrine with the questions, “what, for instance, is a ‘breach of the peace’, or what is meant by ‘in their presence’, or what grounds are sufficient to justify an arrest in anticipation of a breach?”¹⁶ The standard definition that is frequently referred to in case law today was composed by Watkins LJ in *R v Howell*¹⁷.

We are emboldened to say that there is a breach of the peace whenever harm is actually done or is likely to be done to a person or in his presence to his property or a person is in fear of being so harmed through an assault, an affray, a riot, unlawful assembly or other disturbance. It is for this breach of the peace when done in his presence or the reasonable apprehension of it taking place that a constable, or anyone else, may arrest an offender without warrant.¹⁸

Before this there was a tendency to equate breach of the peace with any sort of disturbance. Criticism on the lack of definition and certainty of breach of the peace has frequently reoccurred in legal scholarship. In 1954, Glanville Williams remarked that there was a ‘surprising lack of authoritative definition of what one would suppose to be a fundamental concept in criminal law’.¹⁹ There was still an element of confusion in Brownlie’s *Law of Public Order and National Security* in 1981, which

¹⁶ Ibid. p. 116.

¹⁷ *R v Howell* [1982] QB 416.

¹⁸ Ibid at 427.

¹⁹ M. Supperstone, *Brownlie’s Law of Public Order and National Security*, Second Edition, Butterworth and Co (1981) p. 2.

stated, 'the creation of a breach of the peace is probably not a substantive crime.'²⁰ In 1983, the Law Commissioners Report, *Offences Relating to Public Order*, recommended that, because of the changeability at common law of what constituted a breach of the peace, the term should not be used in statutory form, such as in s5 Public Order Act 1936.²¹

The modern argument for the abolition of the breach of the peace doctrine has been led by academic lawyers Richard Stone and Helen Fenwick. Stone defined the current position, with regard to police powers, stating '[a] police constable may take any reasonable action to stop a breach of the peace which is occurring, or to prevent one which the constable reasonably anticipates will occur in the near future.'²² The focus of Stone's argument is centred upon the desirability of certainty within the law, the retaining of proportionality when infringements of individual rights and freedoms are created, and the undesirability of duplicated legal powers. He concluded that the wealth of statutory provisions presently available has made the breach of the peace doctrine an 'anachronism'. He argued that its vagueness was not consistent with the European Convention on Human Rights (ECHR), which stipulates that certain Convention rights can only be restricted where the constraint is 'prescribed by law'. Fenwick also criticised that, despite the wide use of powers available for policing public protest under the Public Order Act 1986, the police still utilised the 'immensely broad and bewilderingly imprecise powers under the breach of the peace doctrine.'²³

²⁰ Ibid. p. 1.

²¹ Law Com No. 123, *Offences Relating to Public Order* (1983), para 5.14.

²² R. Stone, 'Breach of the Peace: The Case for Abolition', (2001), 2 *Web JCLI* accessed at <http://webjcli.ncl.ac.uk/2001/issue2/stone2.html>

²³ H. Fenwick, 'Marginalising human rights: breach of the peace, "kettling", the Human Rights Act and public protest', *Public Law* (4), (2009), pp. 737-765. P. 737.

2.2) Police Discretion

Without clearly defined legislation, and vague powers available under the breach of the peace doctrine, police officers are afforded wide discretion in fulfilling their duty. The primary debate of police discretion, in the context of this thesis, considers how this can ultimately lead to inconsistent police practice and accusations of political partiality.

Criminologist Tony Jefferson criticised the conservative notion of police 'impartiality', stating that, "it is based on very unrealistic sociology... [and] constitutes an 'impossible mandate'".²⁴ He argued that Chief Constables necessarily make choices and select priorities, which are based on limited knowledge and restricted by time and resources. Similarly, in situations where the law does not supply any clear guidance, police constables on the street must, 'make an inevitably subjective (and hence partial) judgement about the right course of action.'²⁵ Criminologist Robert Reiner's influence on the debate about police partiality added a particular focus on police culture. He stated that police bias and prejudice exist in police work, but argued that it was not necessarily the 'product of peculiarities of the individual personalities of police officers, but a reflection of wider societal prejudice, accentuated by the characteristics of police work.'²⁶

The existence of police discretion has been most distinctly evaluated by academic lawyer Laurence Lustgarten. He argued that the degree of discretion that existed within the police force was higher at the lower levels of the hierarchy as 'they act

²⁴ T. Jefferson, *The Case Against Paramilitary Policing*, Open University Press (1990), p. 47. Citation from P. K. Manning, 'The Police: Mandate, strategies and appearances' in J. D. Douglas (ed.), *Crime and Justice in American Society*, Bobbs-Merrill (1971).

²⁵ Ibid.

²⁶ R. Reiner, *The Politics of the Police*; 2nd edition, Harvester Wheatsheaf (1992), p. 159.

within an almost infinite range of lawful possibilities.²⁷ The decision making process for a police officer includes many variables of both 'action and inaction'. For instance, when a constable had been summoned to the scene of a minor fight, Lustgarten demonstrated the breadth of police discretion by highlighting the following options available:

1. Breaking it up, with an informal warning to the participants and no other action.
2. Breaking it up, inquiring into the cause and attempting to conciliate or mediate between them.
3. Formally cautioning either or both.
4. Attempting to inquire into the cause of the fight, arresting only the one he believes was responsible.
5. Arresting both participants, on any of a wide range of charges relating to public order and/or varying degrees of assault as seem to him appropriate.²⁸

Despite their vast variation, Lustgarten expressed that all these options were in the scope of the constable's legal powers. Although both men may have committed common assault by law in this instance, it is perhaps the availability of the first two options that demonstrate the breadth of this discretion. Lustgarten stated that the police constable has a greater amount of discretion 'when he chooses *not* to invoke the law... [as] that will seldom come to his superiors' notice.' In contrast, when a constable wishes to invoke the law, as in the case of Constable Joy of the Kent Constabulary, who arrested an MP for a traffic offence, his superiors were 'able to substitute their discretion for his' overruling Joy's wish to prosecute in favour of a caution.²⁹

It is in public order situations where legal guidance is defined by such vague terms, such as 'breach of the peace' and 'threatening, abusive or insulting words or

²⁷ L. Lustgarten, *The Governance of Police*, Sweet and Maxwell (1986), p.10.

²⁸ *Ibid.*

²⁹ *Ibid.* p. 12. Despite this, Joy still led a successful private prosecution.

behaviour' that discretion is particularly wide as 'virtually any action can, depending on its context, be plausibly branded as criminal so as to justify an arrest.'³⁰ Lustgarten asserts that common sense discretion is needed in such situations and under-enforcement becomes the norm. However, the danger that arises from under-enforcement is that it becomes 'a cloak for conscious or unconscious discrimination on the basis of political opinion, personal appearance, demeanour, social status or race.'³¹ Therefore, the resulting selective enforcement has the power to discriminate against those that Reiner describes as 'police property'. These are the low status, powerless groups of society that the dominant powers leave for the police to deal with and 'turn a blind eye to the manner in which this is done.' These groups include 'vagrants, skid row alcoholics, the unemployed or casually employed residuum, youth adopting a deviant cultural style, ethnic minorities, gays, prostitutes and radical political organisations.'³² The use of police discretion to under-enforce, or selectively enforce the law, therefore, means that individuals that fall within the broad category of 'police property' are more at risk from arrest.

The power of the police 'not' to make an arrest and exercise restraint from enforcing the full extent of their legal powers can be a particularly useful tool in the police's constable's armoury in defusing a situation or preventing a minor disorder from escalating. Yet, as discretion ultimately leads to selective enforcement, it can also prove very controversial, especially if an individual or group of people feel as though more discretion is afforded to others than themselves. This situation is thoroughly explored in this thesis as communists and anti-fascists regularly argued that police tactics were more autocratic and brutal towards them than towards the BUF.

³⁰ Ibid. p. 15.

³¹ Ibid.

³² Reiner, *Politics*, p. 118.

Although it is not the intention of this thesis to defend fascist activism or incidents of violent policing, it does promote various explanations for the perceived difference in discretion that was exercised in the interwar period, and also stimulates a wider understanding of this by also analysing incidents where the fascists were also at the receiving end of autocratic police practice.

The debate on police discretion demonstrates that not only does partiality exist as part of the inherent nature of police work at all levels, but certain levels of bias and prejudice towards minority groups (such as ethnic minorities or lower-working-class youth) can also be institutionally manufactured. Reiner warned that a vicious circle can develop from such encounters between the police and their 'property' generating hostility and suspiciousness on both sides, which only exacerbates the situation.³³ Indeed, by the time the BUF were formed, the police and the political Left already had an established history of confrontations, violence and distrust. The different relationships that the far-Left and the far-Right formed with the police, and the manner of their interactions with them was a significant factor which potentially influenced the use of police discretion and the selective enforcement of the law which is examined in this thesis.

2.3) Human Rights and Residual Freedom

Before the Human Rights Act 1998 and the incorporation of the European Convention on Human Rights (ECHR), there was no legally defined 'right' of public meeting or freedom of speech. Previously, people were at liberty to exercise freedom of speech or assembly, provided that their actions did not contravene any existing law. Without a written Constitution that guaranteed such 'rights', the notion of

³³ Ibid. p. 170.

residual freedom was prevalent in English law. Since the nineteenth century there has been various legal references to such rights, but as lawyer Davis Mead suggests, there ‘is no time at which one can easily plot the entry of a right of assembly and protest into legal and judicial discourse in England.’³⁴ Mead cites *Bonnard v Perryman*³⁵ as possibly the earliest mention of a right of free speech.³⁶ Here Lord Coleridge CJ stated ‘The right of free speech is one which it is for the public interest that individuals should possess, and, indeed, that they should exercise without impediment, so long as no wrongful act is done’.³⁷

In *An Introduction to the Study of the Law of the Constitution* A. V. Dicey offered a contradictory view. Although the first edition of this work fell six years before *Bonnard*, Dicey continued to amend the text until 1908, and his latest version omitted this case. Dicey clearly rejected that any rights to freedom of speech existed in English law.

As every lawyer knows, the phrases “freedom of discussion” or “liberty of the press” are rarely found in any part of the statute-book nor among the maxims of the common law. As terms of art they are indeed quite unknown to our courts. At no time has there in England been any proclamation of the right to liberty of thought or to freedom of speech.³⁸

Similarly, in respect of the right of public meeting, Dicey also stated that ‘it can hardly be said that our constitution knows of such a thing as any specific right of public meeting.’³⁹ However, the omission could possibly be due to *Bonnard* being a libel case.

³⁴ D. Mead, *The New Law of Peaceful Protest: Rights and Regulation in the Human Rights Act Era*, Hart Publishing Ltd (2010) p. 4.

³⁵ *Bonnard v Perryman* [1891] 2 Ch 269 (CA)

³⁶ Mead, *The New Law*, p. 4. However, the right to public assembly was also previously discussed in *Ex parte Lewis* (1888) 21 QBD 191 and is discussed in Chapter 3.

³⁷ *Ibid*, 284

³⁸ A. V. Dicey, *An Introduction to the Study of the Law of the Constitution*, 10th Edition, Macmillan Press Ltd (1959) pp. 239-240.

³⁹ *Ibid*, p. 271.

In the 1930s, when the issue was directly related to political protest and activism, Lord Hewart CJ emphatically quashed any notion of such rights in *Duncan v Jones*⁴⁰ ruling, 'English Law does not recognize any special right of public meeting for political or other purposes.'⁴¹ This particular case is discussed in more detail in Chapter 3. However, 40 years later in *Hubbard v Pitt*,⁴² Lord Denning cited *Bonnard v Perryman* to convey the importance of the right to protest, 'As long as all is done peaceably and in good order, without threats or incitement to violence or obstruction to traffic'.⁴³ Despite these sporadic and inconsistent references to the rights of free speech and public assembly, the confusion is often caused by the terms 'right' and 'liberty'. In *Hubbard*, Stamp LJ agreed with Denning described it as the 'liberty to speak, [and] the liberty to assemble'⁴⁴ which is more consistent with the notion of residual freedom than expressly defined and legally protected 'rights'. David Mead emphasised the difference that the HRA had, by stating that the move from a 'residual, liberty based system to one based on positive rights brings a shift in the burden of proof.'⁴⁵ This means that public authorities must now provide an objective basis for any ban or condition that they impose on public assemblies and all restrictions must be justified in Article 11(2) terms. Effectively Chief Constables are required to enforce the least restrictive measures open to them in relation to the potential for disorder, when imposing conditions on public assemblies.

Therefore, the concept of residual freedom is applied to the analysis of the activity of the BUF and their political rivals. The only 'right' associated with the public highways, was the right of free passage. Without legal protection to the 'right' of public

⁴⁰ *Duncan v Jones* [1936] 1 KB 218

⁴¹ *ibid*, 222.

⁴² *Hubbard v Pitt* [1976] QB 142

⁴³ *ibid*, 178.

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⁴⁵ Mead, *The New Law*, p. 204.

assembly, those who did assemble in public without permission of the owner of the highway, which was usually the local authority, could technically be guilty of trespass.

2.4) Unlawful Assembly, Rout, Riot and Affray

The common law offences of riot, rout, unlawful assembly and affray were abolished under s9(1) Public Order Act 1986, yet they had been part of English law since the Early Modern period. In Lambard's *Eirenarcha* of 1591, 'Riot, Route, or other Unlawfull Assemblie, etc.' are described as breaches of the peace which were punishable as misdemeanours.⁴⁶ In 1840, the Criminal Law Commissioners declared that the division of unlawful assembly, rout and riot, as separate offences was considered 'unnecessary and inconvenient' as the element of 'unlawful assembly' was prevalent in all three. Therefore, an unlawful assembly was said to consist of:

- (1) An assembly of three or more persons;
- (2) A common purpose (a) to commit a crime of violence or (b) to achieve some other object, whether lawful or not, in such a way as to cause reasonable men to apprehend a breach of the peace.⁴⁷

An unlawful assembly then became a rout, once members of that assembly *started to move towards* the execution of their 'common purpose' or 'joint design'. Members of the assembly are then guilty of riot when the joint design is either *executed or part executed*. The Commissioners continued:

[I]t seems to be a simpler and more intelligible principle of arrangement to consider the unlawful assembly as the groundwork of the offence and the part execution of the joint design or the motion towards it as aggravations.⁴⁸

⁴⁶ Supperstone, *Brownlie's*, p. 120.

⁴⁷ J. C. Smith, and B. Hogan, *Criminal Law* (3rd edn), Butterworths (1973), p. 609, citing XX Parl. Papers, Vol. I; Russell, 243.

⁴⁸ Supperstone, *Brownlie's*, p. 121.

Further factors which indicate when an unlawful assembly became a riot was the necessity that the execution or part execution of their common purpose to, 'be such as to be calculated to cause *alarm* in the mind of at least one reasonable person.'⁴⁹

The Riot Act 1714 created a statutory felony of riot and was repealed by s10(2) Criminal Law Act 1967. Under this legislation, if 12 or more persons were 'unlawfully, riotously, and tumultuously assembled together, to the disturbance of the publick peace', the Justices were required to read the Riot Act, which ordered all persons to disperse and depart to their habitation or lawful business. It was a felony for any person to remain in the area one hour after the reading of the proclamation. Lawyer Richard Vogler highlighted that the statutory offence of riot differed from the common law offence, as it was not necessary to prove a specific act or intention (common purpose) of those assembled, and presence was merely enough to hang the accused.⁵⁰ If those assembled had not dispersed within one hour then, the justices were empowered to command all citizens 'of age and ability' to assist them to seize or apprehend 'such persons so unlawfully, riotously and tumultuously continuing together after proclamation made'. Furthermore, if any of the rioters were 'killed, maimed or hurt' then the justices, and those assisting them, 'shall be free, discharged and indemnified' of any crime. The Act was last read in 1919, and was repealed in 1967. Vogler noted that its legacy was still considered in 1981 during the inner-city riots, when the Metropolitan Police Commissioner 'argued vigorously for its re-enactment'.⁵¹

⁴⁹ P. S. James, *Introduction to English Law* (8th edn), Butterworths (1972). P. 155.

⁵⁰ R. Vogler, *Reading the Riot Act: The Magistracy, the Police and the Army in Civil Disorder*, Open University Press (1991), p. 1.

⁵¹ Vogler, *Reading*, p. 3.

The common law offence of affray occurred when there was unlawful fighting (or a display of force without actual violence) between one or more persons in such a manner that reasonable people might be frightened or intimidated. The second element dictates that unless the violence is seen by persons other than the parties concerned, the offence would only constitute assault. This does not necessarily mean that an affray could only be committed in a public place, as assumed in *Sharp*,⁵² as the following judgment in *Button v DPP*⁵³ demonstrated. There was also a large distinction between the punishments attributed to affray and common assault; while the latter was punishable on indictment with one year imprisonment, affray was punishable with a fine or imprisonment at the court⁵⁴

3) Aims and Methodology

Primarily this thesis is a historico-legal study of public order law and the responses to the BUF in the 1930s. By adding a critical legal lens to the history of political extremism in the interwar period, the principal forms of fascist propaganda are evaluated, and the responses by the Government, judiciary and the police are analysed. It is questioned that with such broad and imprecise powers relating to public order, how could the police fulfil their role consistently, impartially and democratically? The tactics employed by the police and the use of their discretion during the extreme political activism of the 1930s is examined in order to question the accusations of police partiality. Significant incidents are analysed which demonstrate that police tactics also stifled fascist activism, suggesting that there were other significant factors that influenced police discretion. Therefore, these need

⁵² *Sharp* [1957] 1 QB 552.

⁵³ *Button v DPP* [1966] AC 591.

⁵⁴ Smith and Hogan, *Criminal Law*, p. 617.

to be examined in order to provide a greater understanding of the policing of political extremism in the interwar period.

In the introduction of *Comparative Histories of Crime*, Barry Godfrey, Clive Emsley and Graeme Dunstall noted that, 'Underpinning all categories of comparative approach is the belief that researchers can disaggregate, interrogate and theorise a culture that is not their own.'⁵⁵ Although this reference was applied to comparative criminological research of different countries, the same principle is present when using a historical methodological framework. An understanding and an appreciation of the cultural and social differences of 1930s Britain are as important to the knowledge of the historical development of the law.

Academic lawyer Lorie Charlesworth argued that 'the very process of studying law in action cannot forsake a historical form of analysis.' Historical contextualisation is needed, argued Charlesworth, 'in order to appreciate the extent to which the guiding ideas, beliefs and values contained within, or otherwise attributed to or associated with, the research topic, have come to be constituted in their present but still developing form.'⁵⁶ The addition of a historical methodology will therefore enhance the research, but will also present distinct obstacles. Godfrey supplemented Hartley's famous quote that 'The past is a foreign country' by adding 'moreover, one we can never visit.'⁵⁷ This viewpoint should not be seen as a deterrent to historical research, but a stimulus to question and handle sources in a scholarly and perceptive fashion in order to achieve accuracy in representing the past.

⁵⁵ B. Godfrey, C. Emsley and G. Dunstall (eds), *Comparative Histories of Crime*, Willan Publishing (2003), p. 2.

⁵⁶ L. Charlesworth, 'On Historical Contextualisation: Some Critical Socio-Legal Reflections', *Crimes and Misdemeanours*, 1/1 (2007), p. 8.

⁵⁷ Godfrey *et al*, *Comparative Histories*, p. 7.

This thesis is primarily concerned with political extremism and public order law in the inter-war period. It requires the contextualisation of the past in order to understand the legal system, as well as those who amended it, enforced it, and operated within it. The result is a methodology that embraces the disciplines of Law, History and Criminology. This historico-legal analysis draws on a wealth of primary source material including, political publications, memoirs, newspaper reportage, police reports, Parliamentary debates, Home Office reports and correspondence, as well as legal sources such as case law, legislation and statutory developments. This research is thematically separated into different areas of public order law. The principal methods of disseminating propaganda by the interwar fascists, which frequently disrupted public order, are broken down into four separate topics; public processions, public meetings, public meetings held on private premises, and the wearing of political uniforms. Each topic came under the focus of the National Government which framed the Public Order Act 1936 to minimise the disorder associated with politically extreme propaganda and protest. Within these themed chapters, an examination of legal responses before and after the era of the BUF situates them within their historico-legal context. The Public Order Act provided the police with wide-reaching powers to suppress political activism and public protest more generally. The immediate legacy of such legislative responses to political extremism in the interwar period are also examined and applied to the post-war activities of Mosley's political return with Union Movement (UM) as well as other politically extreme groups such as Sinn Fein.

The level of blame for political violence in the inter-war era has frequently grabbed the attention of historians of British fascism, with the emphasis on the culpability

swinging gradually between the far-Right and the far-Left. Similarly, the established historiography has argued about different intensities of far-Right political partiality within the police force. However, this thesis is less concerned with how much blame should be attributed to who, or how partial the police were, but its objectives are to provide a legal framework for understanding individual legal responses which emphasise the importance of discretion and offer a richer understanding of the relationship between the police and the judiciary with fascist activism. This methodology promotes the view that the police are not a monolith, and that scholars who have argued that the police were politically partial towards the fascists are not only offering a simplistic overview which ignores vital evidence, but they also only present a one-dimensional assessment of the nature of public order policing itself.

4) Chapter Synopsis

The first chapter provides a brief overview of the BUF and their place in interwar Britain. Then, the historiography of the BUF and the principle literature relating to public order law and policing is reviewed.

Adopting the first topic of public order law, Chapter 2 evaluates the use of, and responses to, public processions. The Public Order Act 1936 introduced controversial provisions which enabled police authorities, with the sanction of the Home Secretary, the power to prohibit or regulate public processions. In order to evaluate how this major legal development occurred, the chapter analyses the common law history regarding public procession and public assembly. The landmark cases of *Beatty v Gillbanks*⁵⁸ and *Wise v Dunning*⁵⁹ are given particular reference. The hunger marches of the National Unemployed Workers Movement (NUWM) are

⁵⁸ *Beatty v Gillbanks* (1882) 9 QBD 308.

⁵⁹ *Wise v Dunning* [1902] 1 KB 167.

then analysed and compared to the BUF's own provocative marches including the famous East London march of 4 October 1936 which resulted in the Battle of Cable Street. The subsequent legislation and how it was consequently applied to BUF activism is examined. The continued use of s3 in the post-war period and its application to emerging fascist groups such as Union Movement is then examined.

Chapter 3 analyses the legal issues associated with public meetings in public spaces. It focuses on the ideas associated with the right to free speech; although no legally protected right existed until the Human Rights Act 1998. An evaluation of the Trafalgar Square riots of 1888 provides the historical context for the debate on the claims to the 'right' of free speech, before examining the public meetings of the BUF and the famous case of *Duncan v Jones*,⁶⁰ where a Left-wing speaker refused to close her meeting at the request of a police officer who anticipated a breach of the peace. The development of legislation that restricted free speech, such as s5 Public Order Act 1936, is evaluated and a comparison of the legal responses to fascist anti-Semitic speeches and anti-fascist heckles are made. The continuing use of fascist anti-Semitism in the immediate post-war era is examined with relation to the effectiveness of s5.

The principal focus of Chapter 4 is the BUF meeting at Olympia, London, where Blackshirt stewards brutally ejected anti-fascist hecklers from the hall without any police interference, and the communist meeting in South Wales which was attended by police without the permission of the organisers, and resulted in the controversial judgment in *Thomas v Sawkins*⁶¹. This chapter demonstrates that the fundamental differences between the two events could be understood by more elements than just

⁶⁰ *Duncan v Jones* [1936] 1 KB 218.

⁶¹ *Thomas v Sawkins* [1935] 2 KB 249.

politically motivated policing. Before the analysis of fascist meetings held on private premises, context of political and legal responses to the appropriate stewarding of meetings is given by the examination of the Suffragette tactic of opposing Liberal meetings between 1905 and 1908, and the Departmental Committee Reports of 1908. An examination of the Conservative Party Conference at Blackpool in 1958 demonstrates that there was still a vibrant legal debate concerning the use of violence by stewards in the post-war era. Demonstrating the application of inconsistent police tactics across the country, this chapter argues that the ambiguous nature of public order policing on private premises, and the legacy of the Edwardian Government's *laissez-faire* attitude to the autonomy of individual police authorities using their own methods in such cases, hindered effective and consistent policing of meetings held on private premises.

In Chapter 5, the issue of political uniforms is addressed and the contemporary accusation of the Blackshirt being a particular instrument of provocation conducive to public disorder is evaluated. The mainstream political responses are analysed and the debate on proscribing them is evaluated from the Blackshirts introduction to British society, to their ultimate prohibition under s1 Public Order Act 1936. Various s1 offences are then investigated, and the definition of what constitutes a 'uniform in connection with a political object' is analysed utilising various magistrates' judgments. The legacy of this provision is also analysed in relation to the prosecution of Ku Klux Klan and Sinn Fein activists in the 1960s and 1970s respectively.

In the final concluding chapter, the research findings of the previous thematic chapters are assimilated. It is argued that inconsistent police practices across different police authorities are dependent on several variables which include the reliance on the highly ambiguous breach of the peace doctrine and the prevalence of

subjective legislation in controlling disorder. It is contended that, although partiality maybe understood to have existed within the police force (especially at street level), the difference in policing protestors of the far-Right and far-Left is better understood by the different behaviour and conduct of each extreme group and the different relationships that each group manufactured with the police. Additionally, it is considered that each police force, with the influence of their watch committee or standing joint committee, had scope within the wide legal framework to fashion their own practice making national standardisation unlikely. It is argued that the amount of discretion available within public order law offered little confidence that it could have been applied consistently, impartially and justly. In conceding this, however, it is also important to note that this inconsistency also saw the fascists on the receiving end of autocratic police practice as well as members of the far-left. Therefore, it is argued that police inconsistency is attributable to wider legal factors than previous notions of pro-fascist partiality.

Chapter 1

The British Union of Fascists and Public Order

You are on the wrong track, I am afraid sir, for whereas the Fascisti stand for law and order, Blackshirt is responsible for many mysterious affairs which are decidedly against the law.¹

1) Introduction

The above quote is part of the opening dialogue in Bruce Graeme's 1925 fictional crime novel *Blackshirt*. The title character is described as a 'super-criminal' in this exchange between a police officer and Sir Allen Dunn, which distinguishes him from the fascist movement and sets him up as the novel's anti-hero; a gentleman thief, who burgles the rich for fun. Yet, it also reveals the fictional police officer's opinion of the fascist movement as one which stood for law and order. This reference to the Fascisti demonstrated an opinion which was commonly held amongst British society. The British public's perception of fascism in 1925 would have been shaped by favourable newspaper reports of Benito Mussolini's regime in Italy in the pages of the British Conservative press, and the British Fascisti (BF) which formed in 1923. Historian Martin Pugh, commenting on Mussolini's visit to London in December 1922, stated that the Conservative politicians of the far-Right found him 'intriguing and even inspiring', and suggested that for the British Government, 'fascism in Italy was an experiment deserving of success, and its violent aspects could simply be overlooked.'² The BF also received some favourable reportage, and they claimed

¹ B. Graeme, *Blackshirt*, George G Harrap & Co. (1931), p. 9.

² M. Pugh, 'Hurrah for the Blackshirts! Fascists and Fascism in Britain Between the Wars', Pimlico (2006), p. 38.

that they were 'mainly concerned with the observance of law and order.'³ This relationship between fascist activism and the expansion of public order law in the 1930s is the principal focus of this thesis. This chapter first examines the significant developments of far-Right movements in Britain in the interwar era and places the BUF within their historical context. The existing historiography and secondary literature is then analysed in relation to specific themes of far-Right research and public order policing.

2) The BUF in Historical Context

2.1) The Predecessors of the BUF

The BF was the first self-professed fascist movement in Britain, and was formed by Miss Rotha Lintorn Orman. Historian Richard Thurlow described her as 'a spirited young middle-class woman' who served in the Women's Reserve Ambulance during the First World War and twice won the Croix de Charité for heroic rescues in Salonica.⁴ Inspired by Mussolini, the BF had a quasi-military structure and their agenda was to combat communism and to stand for law and order. They argued that they did not support the idea of dictatorship and formed to help the British authorities in an anticipated struggle with socialism and communism which they believed were organising to upset the Constitution.⁵ This was demonstrated by the several hundred BF members who helped the Government during the General Strike in 1926. They even drilled members so that if the occasion ever arose, they could contact the police and propose, 'if you want a trained body of men to help you, here we are.'⁶ Critics from within the BF included Arnold Leese who left the movement and became

³ *Western Daily Press*, 29 Mar 1924.

⁴ R. Thurlow, *Fascism in Britain: From Oswald Mosley's Blackshirts to the National Front*, I. B. Tauris (2009), pp. 33-34.

⁵ *Western Daily Press*, 29 Mar 1924.

⁶ *Exeter and Plymouth Gazette*, 1 Sep 1925.

a founder member of the anti-Semitic movement the Imperial Fascist League (IFL). He stated, 'there was no Fascism, as I understood it, in the organisation, which was merely Conservatism with Knobs On.'⁷ History has also failed to take the movement seriously as a potential political force; Pugh notes that historians have tended to treat the BF as 'a movement for Boy Scouts who had never grown up.'⁸

The IFL, along with the Nordic League and the Britons Society, represented the main British far-Right racial nationalist groups of the inter-war period that espoused extreme anti-Semitism and held a dedicated belief in the *Protocols of the Elders of Zion*. The *Protocols* purportedly unveiled a secret international organisation of Jews, who had an undying hatred of the Christian world and plotted to attain world domination. First distributed in Russia in 1905, it was not published in Britain until 1920 as *The Jewish Peril*. It was uncovered as a hoax in a series of articles in the *Times*, demonstrating that many of the passages claiming to be minutes from a meeting of Jewish leaders, were in fact plagiarised from other sources which included the *Dialogue in Hell Between Machiavelli and Montesquieu* (1864) by French satirist Maurice Joly.⁹ The IFL were a small militant group, averaging only 150 members throughout the 1930s. Thurlow asserted that their activities were only kept going by 50 enthusiasts based in London and the 'obsessional fanaticism' of their 'guiding spirit', Arnold Leese. The NL and BS were also small movements which only averaged between 200-400 and 30-50 members at their most popular meetings respectively.¹⁰

⁷ Pugh, 'Hurrah for the Blackshirts', p. 55.

⁸ Ibid. p.51.

⁹ *The Times*, 16 Aug 1921.

¹⁰ Thurlow, *Fascism*, pp. 41-42.

2.2) Patterns of BUF Support in Relation to Incidents of Disorder

The introduction of Sir Oswald Mosley's British Union of Fascists in 1932 eclipsed the minor movements in membership and activity. Mosley had previously represented both the Conservatives and Labour in Parliament. In 1930, when his radical proposals to combat rising unemployment in Britain were rejected by the Labour Cabinet, he resigned from Government and formed the New Party in 1931. During the brief existence of the New Party, Mosley's political meetings suffered violent disruption which convinced him that trained stewards were required if his audiences were to hear his speeches. Following a visit to Benito Mussolini in Rome, Mosley created the BUF, who were instantly recognisable by their distinctive Blackshirt uniform. Members were given military style ranks and the national headquarters, known as Black House, was established in Chelsea in 1933. The site was used for the offices of senior officials and was also home to between 50-200 Blackshirts who resided there under military discipline.¹¹

The history of the BUF between 1932 and 1940 witnessed an ebb and flow of support, with peaks and turning points established by particular events. The first was the BUF meeting at Olympia, London in June 1934. The meeting was labelled by the BUF as Britain's largest indoor political meeting with an estimated audience of 12-15,000. This was to be the first downturn for the movement's support, as violent methods utilised by the Blackshirt stewards to eject hecklers were widely criticised in the popular press. Although the initial reaction was a surge in membership, by those who were attracted to the thrill of political confrontation and wished to help preserve free speech, it is widely accepted that the peak of BUF membership of 40,000

¹¹ Thurlow, *Fascism*, p. 69.

declined in the long run following the violence at Olympia.¹² Within a year it is estimated that membership fell to 5,000. The second major event in BUF history became known as the Battle of Cable Street. BUF activity increased in 1936, their processions attracted more members, and with renewed fascist activity, anti-fascist retaliation also intensified.¹³ The BUF made steady progress in London's East End with their anti-Semitic propaganda. On 4 October, the BUF planned a provocative public procession which would have taken them through large Jewish communities of East London. In response, anti-fascists, comprising of Jews, communists, Irish dock workers and local residents built barricades across streets in an attempt to prevent the march. The majority of the violence occurred between the police and the anti-fascists. The police failed to clear the route, and fearing further violence prohibited the Blackshirt procession. The violence which occurred impelled the Government to create new laws which gave more power to the police to maintain public order.

The subsequent Public Order Act 1936 prohibited the wearing of political uniforms and proscribed quasi-military organisations. The BUF was therefore deprived of their Blackshirt uniform. It also gave the police wide discretionary powers to prohibit or regulate public processions, and ban words or behaviour which was threatening, abusive or insulting with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned. Historian Gerald Anderson suggested that following the new legislation, the BUF 'had reached its peak' and the 'amount and intensity of public disorder did decline'.¹⁴ The BUF began to attract large numbers to

¹² Ibid. p. 71.

¹³ University of Sheffield Special Collection, R. R. Bellamy, 'We Marched with Mosley', 1,300 page unpublished 'official' biography, p. 469.

¹⁴ G. D. Anderson, *Fascists, Communists and the National Government: Civil Liberties in Great Britain, 1931-1937*, University of Missouri Press (1983) pp. 191, 202.

its political meetings in 1939 with its peace campaign. Mosley spoke to an estimated 11,000 at Earls Court on 16 July, but the recovery of the movement was limited. Thurlow highlighted that although many joined who were desperate to keep Britain out of another war, others left in protest as it was deemed that the movement was putting fascist loyalties above patriotic considerations.¹⁵ The movement effectively came to an end following the outbreak of war, when in 1940 the BUF's main activists, including Mosley and his wife Diana, were interned under Defence Regulation 18B as potential traitors to the British war effort. The BUF was proscribed later that year.

2.3) Anti-Semitism in British Society

A particular feature of this era that needs some reference is that of casual anti-Semitism within British society. In the interwar period, contemporaries were unaware of the horror that would soon unfold in the shape of a second world war and the Holocaust. Without such knowledge, and an influx of Jewish migrants during this period, prevalent attitudes in British society need to be understood. Established politicians such as Neville Chamberlain and Harold Nicolson were known anti-Semites,¹⁶ but how much further did anti-Jewish feeling permeate British society? Emsley stated that, 'Where the police were less than sympathetic to Jewish victims of Sir Oswald Mosley's British Union of Fascists they were probably reflecting the relatively widespread prejudice towards Jews in interwar Britain.'¹⁷ Historian Colin Holmes stated that a culture of anti-Semitism was evident at a popular level in British society since the 1880s, but it also extended 'into official policy as well... [where] it is

¹⁵ Thurlow, *Fascism*, p. 87.

¹⁶ Cesarani, 'Remember Cable Street?'

¹⁷ C. Emsley, *The Great British Bobby: A History of British Policing from the 18th Century to the Present*, Querus (2010), p. 219.

often disguised as alienism.’¹⁸ An interim report from a social survey on anti-Semitism conducted in 1938, revealed a popular casual disliking of Jews, especially in East London. The report described the remarks by one interviewee, an East London docker, as an ‘overt expression of a much wider feeling.’ He declared:

The dockers round here, they loathe 'em. The other day there were a couple of Jews reading the Communist rag, the *Daily Worker* you know, and talking, and the chaps came along and chucked 'em both into the water... Yes, I work in the docks

The Jews Communist? Yes, they're anything that pay's 'em. They're Conservative when the Conservatives are up, and Liberal when it's the Liberals, and now they're Communist. Anything that suits 'em.¹⁹

Indeed, the survey reported that the communist paper the *Daily Worker* was read by 18 Jews for every ‘cockney’.²⁰ Even popular contemporary fiction such as Sapper’s *Bulldog Drummond*,²¹ made casual links between Jews and international Communist terrorism, while the title character and novel’s hero represented the prototype fascist; he was a patriot and man of action, who ruthlessly uncovered and brutally defeated the attempted communist insurrection of Britain. Other views recorded of the survey, reported that Jewish immigration had roused a nationalist resentment about conflicting values. It stated that previously as a non-Christian the Jew could not be tolerated in a religious state, but with ‘the rising spirit of nationalism... the Jew as a member of a different “race” could not be considered a true patriot.’²² Although the majority of those surveyed in a small doorstep investigation, 69% of men and 77% of

¹⁸ Catterall, ‘The Battle of Cable Street’, p. 110.

¹⁹ T. Harrison, *Mass-Observation: Anti-Semitism Survey* (1938), Mass Observation Online (University of Sussex), accessed from <http://www.massobservation.amdigital.co.uk/Search/filereport.aspx?documentid=239431> on 8 Oct 2011.

²⁰ *Ibid.* p. 23.

²¹ Sapper, *Bulldog Drummond: The Carl Peterson Quartet*, Wordsworth Editions (2007).

²² Harrison, *Mass-Observation*, p. 79.

women, were against anti-Semitism,²³ other prevalent views demonstrated an instinctive pull towards anti-Semitic sensitivity:

My own opinion is that the Jew is as good an Englishman as the rest of us... But, and it is a big but, I am aware that this opinion has been formed... by making a conscious effort to be fair and tolerant. Instinctively, I've got a prejudice against them. I don't know how or when it (*sic*) arose because I've had practically no dealings with them.²⁴

I have an antipathy to Jews, and, while realising that it is unreasonable, I am unable to overcome it.²⁵

It was activism in areas such as East London where such prejudice existed, that BUF propaganda was able to attract support by creating community tension, suspicion and aversion.

3) The Historiography of the BUF

The historiography of British fascism is extensive, and Historian Richard Payne's criticism of what may be deemed an overpopulated area of historical study is perhaps justified.²⁶ Yet, the diversity of approaches adopted by researchers has vindicated such wide scholarly attention. The historiography of British fascism not only reveals an interesting account of domestic far-Right movements but also adds to the understanding of British society and culture; it reveals attitudes to the role of authority, women, class, religion and race. This review of the historiography of British fascism outlines the different methodologies utilised which are relevant to this thesis. Firstly, it provides a short review of the leading texts on the BUF. Secondly, the more specific theme of cultural and social history is examined which is beneficial to this thesis' aims of positioning responses to extreme political movements and their

²³ Ibid. p. 27.

²⁴ Ibid. p. 42.

²⁵ Ibid. p. 47.

²⁶ S. Payne, *A History of Fascism 1914-45*, London (1996) pp.303-305 in Thurlow, *Fascism*, p. xi.

associated disorder within its wider historical context. Thirdly, this review identifies the different approaches taken by historians regarding the association of political violence with the BUF. Finally, there is an examination of relevant literature relating to public disorder and the police which includes the work of historians and criminologists.

4.1) Major contributions to the History of British Fascism

The major recent contributions to studies relating to British fascism have been Richard Thurlow's *Fascism in Britain*, Nigel Copsey's *Anti-Fascism in Britain*,²⁷ Thomas Linehan's *British Fascism 1918-1939*,²⁸ Martin Pugh's '*Hurrah for the Blackshirts!*' and Stephen Dorril's *Blackshirt: Sir Oswald Mosley and British Fascism*.²⁹ Thurlow presents a concise chronology of extreme Right wing politics in Britain from its ideological beginnings in the 1910s to the demise of the National Front in the 1980s with special attention paid to the development of Sir Oswald Mosley's BUF. Linehan's book explores the roots and ideology of the different Parties and personalities within British fascism whilst also considering the cultural aspects behind it.³⁰ The aim of Pugh's book is to demonstrate the significance of fascism in Britain between the wars by relating fascist ideology and activity to the vital events of this period. Dorril's *Blackshirt* is a recent biography of Mosley and the BUF that questions the sympathetic view presented in Robert Skidelsky's 1975 biography *Oswald Mosley*.³¹

²⁷ N. Copsey, *Anti-Fascism in Britain*, Macmillan Press Ltd (2000).

²⁸ T. Linehan, *British fascism 1918-1939: Parties, ideology and culture*, Manchester University Press (2000).

²⁹ S. Dorril, *Blackshirt: Sir Oswald Mosley and British Fascism*, Viking (2006).

³⁰ Linehan, *British Fascism*, p. ix.

³¹ R. Skidelsky, *Oswald Mosley*, Macmillan (1975).

Edited volumes such as Tony Kushner and Nadia Valman's *Remembering Cable Street*,³² Julie Gottlieb and Thomas Linehan's *The Culture of Fascism*,³³ and Kenneth Lunn and Richard Thurlow's *British Fascism*,³⁴ contain interesting chapters that need to be referenced in this thesis. Among them are Thurlow's account of the passing of the Public Order Act 1936 following the Battle of Cable Street, Philip Coupland's assessment on the meaning and function of the Blackshirt, and John Stevenson's account of the Metropolitan Police and public order.

Accounts on the political violence associated with the BUF will also be studied from journal articles, including 'Bullies or Victims: A Study of British Union of Fascists Violence' by Daniel Tilles,³⁵ Jon Lawrence's 'Fascist violence and the politics of public order in inter-war Britain: the Olympia debate revisited'³⁶ and Martin Pugh's reassertion of the revisionist view of the Olympia debate in 'The National Government, the British Union of Fascists and the Olympia Debate'.³⁷

In '*Hurrah for the Blackshirts!*', Martin Pugh demonstrated that fascism in Britain was not necessarily marginalised and the early twentieth century saw the authoritarian nature of the British state,³⁸ the attraction of members from the major parties to the idea of National Efficiency which 'represented a halfway house to the corporate state'³⁹ and the flow of ideas and personnel between fascism and the Conservative

³² T. Kushner and N. Valman (eds.), *Remembering Cable Street: Fascism and Anti-Fascism in British Society*, Vallentine Mitchell, (2000).

³³ J. V. Gottlieb and T. P. Linhan (eds), *The Culture of Fascism: Visions of the Far Right in Britain*, I. B. Taurus (2004).

³⁴ K. Lunn and R. C. Thurlow (eds), *British Fascism: Essays on the Radical Right in Inter-War Britain*, Croom Helm Limited (1980).

³⁵ D. Tilles, 'Bullies or Victims? A Study of British Union of Fascists Violence' in *Totalitarian Movements and Political Religions*, vol. 7, no. 3, pp. 327-346 (September 2006).

³⁶ J. Lawrence, 'Fascist violence and the politics of public order in inter-war Britain: the Olympia debate revisited' in *Historical Research*, vol. 76, no. 192 (May 2003).

³⁷ M. Pugh, 'The National Government, the British Union of Fascists and the Olympia Debate' in *Historical Research*, vol. 78, no. 200 (May 2005).

³⁸ Pugh, 'Hurrah', pp. 8-9.

³⁹ *Ibid*, p. 15.

Right.⁴⁰ He also discussed the disillusionment of some Conservative MPs with regard to the National Government and fascist responses to the interwar political troubles, including the General Strike 1926, the crisis of Empire, growing unemployment 1929-1931, and the Abdication of Edward VIII.

While much literature has been produced on the BUF, there has been relatively little research on their antagonists. Nigel Copsey's *Anti-Fascism in Britain* was a decisive response to this imbalance, and he defended its importance stating that 'far more people supported the anti-fascist cause than ever supported fascist organisations' and added that the anti-fascist movements played an important part in the failure of British fascism.⁴¹ Copsey examined both passive and active forms of anti-fascism and their positive and negative effects on fascist movements. For instance, the anti-fascists campaign at the Olympia meeting helped deny the BUF political legitimacy and militant anti-fascists 'ensured that Mosley remained outside the political mainstream' during the early years of the BUF's history. However, he concedes that the price for this in the later years of BUF activism was to confine them to areas, such as the East End of London, where they cultivated the 'cultural tradition of anti-Semitism.'⁴² Copsey identified an escalating cycle which saw a greater involvement of Jews partake in anti-fascist activism in response to the anti-Semitic campaign, which in turn, provided more ammunition for fascist propaganda heightening its impact. Seeking alternative measures to combat fascist activism, Copsey noted that the Labour Party and the Board of Deputies of British Jews advice of ignoring fascism would be one way to break this cycle, but he advocated that community action was more effective in eroding support for fascism.

⁴⁰ Ibid, p. 5.

⁴¹ Copsey, *Anti-Fascism in Britain*, pp. 2-3.

⁴² Ibid. p. 79.

4.2) Looking Back: Fascism, Society and Culture in Interwar Britain

Fascism today is frequently associated with Nazism and its extreme objectives which were manifested in total war and genocide. The place of fascism in British history is therefore a controversial subject which raises questions about family and community association with a movement which was associated with violence, brutality, anti-Semitism and the Holocaust. In *Blackshirts in Devon*, Todd Gray highlighted the problem of writing about a period as recent as the 1930s that touched the lives of 'unsuspecting friends and relatives' or recorded a 'shameful aspect of local history' but argued that for a historian not to research areas on grounds of such sensibilities would be irresponsible.⁴³ He also importantly linked modern perceptions of fascism as being associated with the Holocaust, causing popular repulsion towards fascism and the belief that those who followed it were depraved or evil.⁴⁴ Modern reflections on fascism in the 1930s will be tarnished by the knowledge of the Nazi atrocities that were to become evident in the aftermath of the Second World War, but the period of 1930s Britain needs to be examined in its own cultural and political context. However, a cultural interpretation of British fascism potentially sets a dangerous precedent that Linehan and Gottlieb address in *The Culture of Fascism*. They stated that a cultural interpretation of fascism 'does not provide retrospective legitimacy' and that 'any reinterpretation of fascism must remain firm in its fundamental condemnation of the British far-Right'.⁴⁵ By introducing cultural research methods to the history of British fascism, Linehan contested the conclusion of Robert Benewick's 1969 monograph *Political Violence and Public Order* that the BUF's downfall was

⁴³ T. Gray, *Blackshirts in Devon*, The Mint Press (2006) pp. x-xi.

⁴⁴ Ibid.

⁴⁵ J. V. Gottlieb and T. P. Linhan (eds), *The Culture of Fascism: Visions of the Far Right in Britain*, I. B. Taurus (2004) p. 2.

due to its 'alienation from the British political culture.'⁴⁶ Citing Lewis, Linehan asserts that this view has since become obsolete as, 'it is naïve and smug to suggest that the BUF's failure was somehow 'preordained by the intrinsic nature of British society'.⁴⁷

In interwar Britain, despite numerous instances of violence involving fascists and anti-fascists, there were no deaths associated with the clashes. With this in mind, Daniel Tilles pointed out that it would be unfair to associate British fascism too closely with German Nazism or Italian fascism although Mosley himself made little effort to dissociate himself from these movements.⁴⁸ One difference between British fascism and German Nazism was highlighted by Gray, who recited a *Western Independent* article on the violence during Mosley's speech at Plymouth. The report stated that a German fascist at the meeting claimed 'Plymouth fascists shouted and fought while German fascists shot their opponents'.⁴⁹ In writing the history of the BUF it is therefore important not to associate British fascism too closely to its European counterparts. Also, the political violence that occurred needs to be aligned to its contemporary political culture. For the historian, this creates ethical questions on how the history of the BUF can be written without being sympathetic to the fascist cause without dismissing wider cultural aspects of the period which may not necessarily place them as far outside of the violent political culture as we may have previously thought.

4.3) The BUF and Political Violence

⁴⁶ R. Benewick, *Political Violence and Public Order*, Allen Lane The Penguin Press (1969).

⁴⁷ Linehan, *British Fascism*, p. 92.

⁴⁸ D. Tilles, 'Bullies or Victims? A Study of British Union of Fascists Violence' in *Totalitarian Movements and Political Religions*, vol. 7, no. 3, pp. 342-343 (September 2006)

⁴⁹ Gray, *Blackshirts*, p.69.

Throughout the historiography on the BUF, attitudes towards the violence associated with them have frequently changed. Early orthodox accounts, such as Colin Cross' *The Fascists in Britain*⁵⁰ and Robert Benewick's *Political Violence and Public Order* held the BUF largely responsible for generating violence, even when they appeared to be the victim. They were considered accountable because of the provocation caused by their political uniforms, choice of locations and their violent stewarding. Revisionists, such as Robert Skidelsky, have attempted to show that the BUF were more victim than aggressor. He claimed that a small group of militant communists targeted the BUF forcing them to adopt aggressive self-defence tactics. As would be expected, this view is also consistent with the fascists own version of history, recorded in memoirs and autobiographies such as Mosley's *My Life*,⁵¹ John Charnley's *Blackshirts and Roses*,⁵² Richard Bellamy's *We Marched With Mosley* and Jeffrey Hamm's *Action Replay*.⁵³ Hamm even sited Skidelsky's biography to defend the tactics used by Blackshirt stewards at Olympia claiming, 'Professor Robert Skidelsky... can hardly be accused of partiality'.⁵⁴

However, it is now commonly acknowledged amongst historians that the biography was partial. This was argued by David Lewis who stated that 'Skidelsky's judgment was warped by his obvious sympathy and admiration for his subject.'⁵⁵ Lewis' monograph, *Illusions of Grandeur*, is part of the more recent interactionist school who have modified previous approaches and acknowledge that both fascists and anti-fascists both hold a significant amount of responsibility for public disorder in the inter-war period. Other interactionists include Thurlow, Linehan and Daniel Tilles.

⁵⁰ C. Cross, *The Fascists in Britain*, Barrie and Rockliff (1961).

⁵¹ O. Mosley, *My Life*, Friends of Oswald Mosley (2006), downloaded from <http://www.oswaldmosley.com/downloads/My%20Life.pdf> on 15 April 2010.

⁵² J. Charnley, *Blackshirts and Roses*, Brockingday Publications (1990).

⁵³ J. Hamm, *Action Replay*, (1983).

⁵⁴ *Ibid*, p. 39.

⁵⁵ Lewis, *Illusions*, p. 283

Tilles clearly defines this approach in his article, 'Bullies or Victims? A Study of British Union of Fascists Violence'. He sought to evoke the contemporary pro- and anti-BUF attitudes towards political violence identifying a middle ground that argued that they were not the 'bullies' of the 'political playground' as they were so often portrayed, but nor were they innocent victims of anti-fascist obstruction either. He stated that 'the BUF must shoulder a large part of the blame for the clashes which took place'⁵⁶ which included the provocative nature of their uniformed marches and meetings in Jewish areas and virulent anti-Semitism, but also unorganised attacks by BUF members on Jews in the street, 'Jew-baiting' and the Mile End Pogrom. It was this link with violence, some justified and some not, which Tilles suggested was the 'most important factor in the movement's failure.' Other recent accounts, such as Stephen Dorril's *Blackshirt*, have been motivated by their rejection of the 'sympathetic view' of Mosley, and have reinstated an orthodox approach which has utilised recently released records to demonstrate the nature of Mosley's relationship with German Nazi regime, the BUF's funding from them, and the truth about Mosley's anti-semitism which was at the core of his fascist movement, and not a just a response to their decline.

Despite the different approaches taken by historians of British fascism, incidents of public disorder frequently dominate any discourse on the BUF. It is critical events, such as the Olympia meeting and the Battle of Cable Street, which has led to frequent debate between historians about political violence and public order. Jon Lawrence debated the contemporary attitudes towards political violence in 'Fascist Violence and the politics of public order in inter-war Britain: the Olympia debate revisited'. He introduced the pre-war political culture in which the 'old ways' of party

⁵⁶ Tilles, 'Bullies or Victims?' p. 343.

politics and the disorder that occurred are referred to as a 'form of sport' and presented the views of the Liverpool Chief Constable who argued that 'if you consider that your meeting is going to be disrupted by fifty roughs you must have seventy-five roughs who can throw them out'.⁵⁷ Therefore, it was commonly accepted by politicians that the mobilisation of a private force was necessary to ensure successful political meetings.

Lawrence argued that this view changed after the First World War when 'the politics of misrule ceased to be tolerated by the vast majority of politicians.' He also stated that gender issues played an important part in this shift following the Representation of the People Act 1918 as females became more involved with politics.⁵⁸ Lawrence continued to detail the origins of Mosley's Blackshirts and Fascist Defence Force which were created as a result of the disruption to Mosley's political meetings after he split from the Labour Party.⁵⁹ The fascist emphasis on 'defence' and Mosley's direction to his party's members to obey the police meant that the BUF saw themselves as acting within the law and defending the principles of free speech. However, Lawrence argued that Mosley's gamble had failed because it resurrected old political methods of violence, and introduced the political uniform which was seen as 'shockingly new and 'foreign'.⁶⁰

Lawrence pointed out that popular disgust for BUF violence and anti-Semitism can be evidenced by examining the contemporary reactions to their political methods such as those deployed at Olympia which demonstrated that 'average public opinion'

⁵⁷ Lawrence, 'Fascist violence', p. 241.

⁵⁸ This claim was made despite the proven ability of women to cause disruption at political meetings. See discussion of the Suffragettes in Chapter 4.

⁵⁹ *Ibid.*, p. 245.

⁶⁰ *Ibid.*

was against the 'old ways' for fighting and violent ejection.⁶¹ Similarly, Tilles demonstrated that popular revulsion to BUF methods and anti-Semitism could be highlighted by the 100,000 anti-fascists that were present to demonstrate against less than 2,000 BUF marchers at Cable Street in 1936.⁶² Lawrence also argued that just four Conservative MPs defended the Blackshirt methods during the Olympia debate in the Commons which countered Martin Pugh's assessment that there had been a split in the Party in which a majority were prepared to defend or justify the BUF.⁶³ Pugh responded to this article and successfully defended his approach by arguing that there were other outlets for Conservative MPs to have expressed their view of the debate mentioning Conservative journals and the *Morning Post*. He also argued that when old attitudes change they do so gradually and reminded Lawrence 'that many of the inter-war M.P.s had grown up in an era when political violence was routine and they retained the assumptions of an earlier generation.'⁶⁴

The dispute between Pugh and Lawrence highlights the contentious issues surrounding the place of the BUF and political violence in 1930's culture. While Lawrence was keen to point out the popular revulsion towards the BUF, advocating that Mosley had so badly misjudged the contemporary attitudes, Pugh goes further evidencing that such attitudes had not changed completely since the war and there was still some acceptability within British political culture for the methods of the BUF and their heavy handed stewarding. As a landmark event in the history of the BUF, Olympia has been widely discussed and has split historians' interpretations on the impact on the movement's fortunes. Textbook accounts have pointed out that the violence at Olympia was only a factor in the movement's decline in the latter part of

⁶¹ Ibid, p. 267.

⁶² Tilles, 'Bullies or Victims?' p. 333.

⁶³ Lawrence, 'Fascist violence' p. 250.

⁶⁴ Pugh, 'The National Government', p. 255.

1934. Additionally, the loss of support from the Rothermere press in July 1934, the National Government's relative economic upturn in mid-1934, which undermined Mosley's view of economic collapse, and the negative link and fear in the public minds with Nazism following the Night of the Long Knives in Germany on 30 June, were all factors that underscored the BUF's decline in late 1934.⁶⁵

Another seminal event involving the BUF and political violence occurred on 4 October 1936. Sir Oswald Mosley's planned parade through East London was eventually banned by the Metropolitan Police Commissioner Sir Philip Game, as the highly provocative march had prompted 100,000 anti-fascist demonstrators to take to the streets to prevent the Blackshirts from passing. The violence that resulted was largely held between the anti-fascist protestors who had barricaded streets, and the police who tried to disperse them and clear a route for the march. Less than three months later, the Public Order Act 1936 was introduced. The Battle of Cable Street and the resulting legislation initiated an interesting discussion between the relationship of the Government, the police and the BUF.

In 'The BUF, The Metropolitan Police and Public Order' John Stevenson argued that contemporaries often thought of the police as being pro-fascist and anti-communist on account of the police often protecting BUF marches from anti-fascist retaliation. Stevenson's reflection on the relationship was to see the police as being irritated to the problems caused by the BUF, but hostile to the organised Left and claimed that if any bias should be attributed to the Metropolitan Police he stated that they were 'anti-left' rather than 'pro-fascist'.⁶⁶ Stevenson also highlighted complaints from the NCCL that the police did little to protect Jews and non-Jews alike from the 'organised

⁶⁵ Thurlow, *Fascism*, p. 72 and Linehan, *British Fascism*, p. 98.

⁶⁶ Stevenson, 'The BUF', p. 147.

hooliganism, intimidation and physical assaults by fascists'.⁶⁷ Metropolitan Police Commissioner Sir Philip Game rejected the need for a deputation with the NCCL and merely responded that they make written suggestions. Stevenson argued that this cool response was not due to police ignorance of the situation, but to the distrust that they had to the NCCL, which they deemed to be a 'front' organisation for the far-Left, and that the Secretary Ronald Kidd had connections with the Communist Party. These contemporary perceptions on Kidd's affiliations have since been refuted by Janet Clark who stated that Kidd had little to gain from Communist Party membership, as he already had the support of the political Left, and that 'a non-party identity was key to the conception of the NCCL.'⁶⁸ However, she conceded that Kidd did attract radical Left attention, but as he challenged the authorities on the policing of Left-wing political activism, it would have been 'more surprising if communist factions... had not taken an interest in him.'⁶⁹

Stevenson argued that the increasing tempo of clashes between fascists and anti-fascists, and anti-fascist protestors and the police during 1936 culminated in the Battle of Cable Street. This led the Home Secretary to argue that unless more powers were given to the police then 'serious disorder might occur.'⁷⁰ The police attempts to clear the anti-fascist blockades for Mosley's march gave fuel for those who believed the police to be pro-fascist. However, Stevenson argued that the police methods were more an attempt to demonstrate that the police were 'the arbiters of what was or was not permissible on the streets of London.'⁷¹ Stevenson's view on police perceptions were obtained from the files of the Commissioner and he stated

⁶⁷ Ibid, p. 143.

⁶⁸ J. Clark, 'Sincere and Reasonable Men? The Origins of the National Council for Civil Liberties', *Twentieth Century British History*, Vol. 20, No. 4, 2009, p. 523 .

⁶⁹ Ibid, p. 525.

⁷⁰ Stevenson, 'The BUF', p. 146.

⁷¹ Ibid, p. 147.

that within the higher echelons of the force there were attempts to prevent BUF provocation but continued that it is not clear whether this was filtered down to 'local divisions and officers on the spot.'⁷²

In 'The Straw that Broke the Camel's Back', Richard Thurlow examined the Battle of Cable Street and its influence on the National Government's decision to strengthen police powers in order to control political extremism via the Public Order Act 1936. Thurlow stated that the Government was previously reluctant to increase the powers of the authorities amid the fears of how public opinion would regard the reduction of civil liberties, but argued that the Battle of Cable Street was the 'straw that broke the camel's back' which 'resulted in changes to the law and influenced national history.'⁷³ Cable Street, therefore, was a pivotal moment in the development in new legislation, but Thurlow contended that the Public Order Act 1936 must not solely be seen as a reaction to fascist and anti-fascist violence. There had previously been a series of events that threatened public order, including militant trade unionism, Irish Insurrection, industrial unrest between 1918 and 1922, the General Strike of 1926, the rise of unemployment from 1 million to 3 million between 1929 and 1933, and the marches of the NUWM.

Thurlow's assessment of the Metropolitan Police was that at the higher levels of the force there was great hostility to the BUF. He stated that Lord Trenchard, Metropolitan Police Commissioner (1931-1935), wished to ban fascists because of the public order problems and the waste of police resources at their processions and meetings; he was also keen on banning the political uniforms and did not want the

⁷² Ibid, pp. 147-8.

⁷³ R. Thurlow, 'The Straw that Broke the Camel's Back: Public Order, Civil Liberties and the Battle of Cable Street' in T. Kushner and N. Valman (eds.), *Remembering Cable Street: Fascism and Anti-Fascism in British Society*, Vallentine Mitchell, (2000) p. 74.

police force to look as though they were protecting the fascists.⁷⁴ Trenchard was succeeded by Sir Philip Game who was even more anti-fascist and told his force to 'err on the side of harshness with regard to cautioning and arresting anti-Semitic speakers in the East End.'⁷⁵ However, due to the numbers of police on the ground, and the evidence of anti-Semitic speeches being made, Thurlow argued that with the small numbers of arrests made, despite the instructions of Sir Philip Game, the police on the ground were more concerned with upholding the right to free speech as long as public order was not threatened.⁷⁶ Although free speech was not a legal right, the inconsistent actions of police officers towards political speakers highlights the problems associated with police discretion.

Thurlow considered the notion that the Public Order Act might potentially be perceived as a national over-reaction due to the violence in a small area of East London.⁷⁷ He argued that although there was violence between fascists, communists and Jewish radicals elsewhere, they did not experience the same level of fascist anti-Semitism as London's East End. He also suggested that the authorities in other areas were able to contain political anti-Semitism and political violence. The Public Order Act utilised provisions from draft Bills which were discussed in 1932 and 1934. According to Thurlow, revisionists saw the period as one in which two political extremes came together resulting in public disorder, which led the state to fairly successfully regulate and control public order.⁷⁸ However, Thurlow added that

⁷⁴ *Ibid*, p. 84.

⁷⁵ *Ibid*, p. 85.

⁷⁶ *Ibid*.

⁷⁷ *Ibid*, p. 78.

⁷⁸ *Ibid*, p. 92.

although the Public Order Act checked fascist provocation, it also hindered the possibility of protest and therefore restricted fundamental civil liberties.⁷⁹

These studies have looked at the relationship between the BUF and public order without any in-depth examination of the legal system. Stevenson declared that there was further need for investigating the views and methods of the police on the ground, as his study was largely created from correspondence between the high echelons of the police force. Thurlow has added to this argument by stating that the police on the ground were more interested in preserving public order and let some anti-Semitic speeches go unpunished if they believed acting on it would create a disturbance. The application of criminological theory on police culture, and the examination of the contemporary legal system can be utilised to harness a greater understanding of responses to political extremism.

4.4) Policing and Public Order Law

The role of the police during the confrontationally charged political arena of 1930s Britain has been the subject of considerable historical and legal investigation. Contemporary accounts and debates instigated by Left-wing politicians and civil liberty campaigners frequently challenged inconsistent police practice on the grounds of its perceived partiality.⁸⁰ Their allegations were supported by a range of police action, such as, facilitating fascist processions while taking violent action against anti-fascist protesters, and allegedly turning a blind eye to gratuitous fascist violence and the unlawful use of abusive or insulting words or behaviour. The historiography has also frequently advocated that police practice, tactics and

⁷⁹ Ibid, p. 93.

⁸⁰ For examples, see, *HC Deb* 10 July 1936 vol 314 cc1566, *HC Deb* 25 June 1936 vol 313 cc1943, R. Kidd, *British Liberty in Danger*, Lawrence and Wishart Ltd (1940) pp. 123-158 and The Hull History Centre (HHC), UDCL/75/2, NCCL Circular 'Police Discrimination'.

responses often demonstrated bias or partisanship in favour of the fascists when dealing with the problem of public disorder. Stevenson's contention that the Metropolitan Police in this era were 'anti-left' rather than 'pro-fascist', has been countered by lawyers, Ewing and Gearty, who identified that, 'the protestors on the receiving end of police militancy [would have seen] little difference between the two.'⁸¹ Historians, such as Richard Thurlow have highlighted that while the police at the highest level were not in favour of fascism, there were problems of interpreting the law at street level that led to inconsistent treatment of fascists and anti-fascists, but he stopped short of advocating that there was a political motivation for this.⁸² Other authors on British fascism, such as Lewis and Dorril acknowledged that political discrimination did exist in police practice.⁸³ Lewis categorically claimed 'beyond all doubt that instances of police bias did occur', yet he further admitted that a 'full examination of the attitude towards the BUF of the police... lies beyond the scope of this book.'⁸⁴ Indeed, an investigation of the relationship between the legal authorities and the extreme political movements would also require the analysis of the contemporary law, and the application of sociological theory regarding police culture and practice. Also, the methods employed by each movement should be analysed in both their historical and legal context.

The legal context has been explored in great detail by Ewing and Gearty. They examined BUF activism and the role of the state in their chapter 'The Rise and Fall of Fascism' in *The Struggle for Civil Liberties: Political Freedom and the Rule of Law in Britain, 1914-1945*. They offer an important evaluation of the legal issues relating

⁸¹ K. D. Ewing and C. A. Gearty, *The Struggle for Civil Liberties: Political Freedom and the Rule of Law in Britain, 1914-1945*, Oxford University Press (2004) p. 296 n 113.

⁸² Thurlow, *Fascism in Britain*, p. 84.

⁸³ See Lewis, *Illusions of Grandeur*, p. 161 and Dorril, *Blackshirt*, p. 307.

⁸⁴ Lewis, *Illusions of Grandeur*, pp. 160-1.

to political extremism in the inter-war period but as an historical account, the argument is hindered by the partiality of the authors and the neglect of important sources. Their prejudice is highlighted most clearly by Thurlow's review, in which he accused Ewing and Gearty of agreeing with the parts of the Public Order Act that directly affected the BUF but criticised the increased powers of the police relating to marches and demonstrations that also hindered the anti-fascists as well as the fascists.⁸⁵ It is the authors' contention that the police were pro-fascist and anti-Left in this period and the selected evidence which supported this claim. However, it is this partiality that potentially led to the neglect of divergent sources and to the nonchalant comparison of policing tactics at fascist and anti-fascist or Left-wing events. By neglecting certain historical perspectives, such as the difference between the extreme political movements' methods and an appreciation of popular cultural and social attitudes, an evaluation of why the police acted more frequently against the anti-fascists and communists as opposed to the fascists cannot be objectively understood. In addition, the lack of historical scrutiny of highly subjective sources, such as those written by contemporary anti-fascists, emphasises the bias of the authors and their agenda of amplifying the claim of pro-fascist policing.⁸⁶

The relationship between the disciplines of law, history and criminology are important to the study of British fascism, political violence and public order, with the potential to synthesise a greater understanding of the correlation between the BUF and the law. The legal debates which have been either neglected or not fully utilized by historians have been addressed by academic lawyers, such as Ewing and Gearty, yet, in turn,

⁸⁵ R. Thurlow, review of 'The Struggle for Civil Liberties: Political Freedom and the Rule of Law in Britain, 1914-1945 by K. D. Ewing and C. A. Gearty in *Albion: A Quarterly Journal Concerned with British Studies*, Vol. 33 No. 2 (Summer, 2001) pp. 350-351.

⁸⁶ For example, see Ewing and Gearty, *The Struggle*, p. 284, n. 54, where the authors note that for 'a good account' of the Olympia meeting, see I Montagu, *Blackshirt Brutality. The Story of Olympia* (1934). Montagu was a member of the CPGB, an anti-fascist and a maker of socialist films.

they have neglected aspects of cultural and social history. Criminological theory is also important to understand social behaviour and how 'criminal behaviour and society's reaction to it have changed over time'.⁸⁷ This aspect is particularly important when considering public attitudes towards fascist activism in the 1930s in comparison to those in the post-holocaust era.

Adding the element of Criminology will also create a wider comprehension of the principles of policing. For example, it would be inept to discuss the issue of the BUF and law enforcement without an understanding of police discretion and impartiality. Criminologists, such as Tony Jefferson and Peter Waddington, have theorised these principles which add sociological elements to the history of the police and public order. Jefferson criticised Waddington's 'idealist' approach that upheld paramilitarism as the most effective way of implementing impartial public order policing.⁸⁸ In *The Case against Paramilitary Policing*, Jefferson argued that although the concept of impartial law enforcement, which obliges the police to uphold the law generally without favour, is a fine ideal, he asserted that it is sociologically unrealistic and "constitutes an 'impossible mandate'". He contended that limited knowledge about offences, and lack of time and resources, ultimately lead to prioritization and decision making within all levels of the police force, founding the notion of police discretion. Jefferson argued that it was the development of a radical sociology of police work that emphasized 'class-based *outcomes* of discretionary decision-making [that have] exposed a hidden politics of policing'.⁸⁹

⁸⁷ B. Godfrey and P. Lawrence, *Crime and Justice 1750-1950*, Willan Publishing (2005).

⁸⁸ T. Jefferson, *The Case against Paramilitary Policing*, Open University Press (1990) p. 16.

⁸⁹ *Ibid.* p. 47.

The potential for political policing in the inter-war era has been examined by Clive Emsley in both *The English Police* and 'Police Forces in England and France During the Interwar Years'.⁹⁰ Emsley importantly asserted that it is:

too easy to assume that there was a "police view" with regard to politics and public order during the nineteen-thirties... [adding] the opinions of police constables were shaped by a variety of pressures and experiences and there are dangers in assuming a causal link between the conservative function of the police and the conservative principles in policemen.⁹¹

The importance of not treating the national police as a monolith with a single political objective is clear, and certainly variations and inconsistencies in policing public order across the Britain need to be evaluated in order to understand the relationship between the BUF and the law. Emsley also evaluated the involvement of the English police in matters of *haute police*. In contrast to many European police forces, he argued that the English police were able to remain non-political and non-military for much of the nineteenth century. By the early twentieth century police involvement in the secret service grew in response to the First World War and the Russian Revolution. Although this growth continued in the inter-war years of the BUF, the idea of the 'non-political Bobby' was still perpetuated in this period.⁹² Yet, as political policing was developing in this era, it is important to question how much influence *haute police* had on the policing of political extremism. In *The Great British Bobby*, Emsley revealed some of the superficial attitudes of contemporary police officers regarding politically extreme movements that neglected the politics of each group. He quoted Sergeant H B Green, an admirer of Mosley, who stated, 'It is much easier to like a man who is carrying a Union Jack, who is smart and clean with close-

⁹⁰ C. Emsley, *The English Police: A Political and Social History*, Second Edition, Pearson Education Limited (1996), and C. Emsley, 'Police Forces in England and France During the Interwar Years' in C. Emsley and B. Weinberger, *Policing Western Europe: Politics, Professionalism, and Public Order, 1850-1940*, Greenwood Publishing Group (1991).

⁹¹ Emsley, 'Police Forces', pp. 176-177.

⁹² *Ibid.* pp. 260-261.

cropped hair, than a man who has shouted an obscene insult at you and spat in your face.⁹³ On the policing of Left wing activism, Emsley noted that the police officers were often frustrated by having to police such events, as they often lost a day's leave and were not given any overtime pay. The violence attributed by the police was a mixture of 'relief and exhilaration when, after a period of standing in a line and taking abuse and occasional missiles, they were directed to clear the ground.'⁹⁴

Jane Morgan's *Conflict and Order*, which examines the policing of Labour disputes from 1900-1939, also needs to be cited. In this account, she importantly addressed the imbalance of the history of the Labour movement which had previously neglected the role of the police who were largely regarded as either 'a monolithic class enemy,' or 'an irrelevance.'⁹⁵ Although Morgan's research is largely focused upon responses to the labour movement, the evolution of public order law which she charts in this period, as well as the growing influence of the Home Office over provincial police forces, are all important aspects which also relate to any similar account of fascist activism in the inter-war era.

Adding to the work of Emsley and Morgan, Chris Williams critically analysed the relationship between the Home Office and the provincial police forces in 'Rotten boroughs'.⁹⁶ It is of particular interest to this thesis that the increased presence of the Labour Party in local government in the years following the First World War led to an increase in political battles between police authorities and their Chief Constables. In the 'battles' noted by Williams, the Home Office came down against the Labour

⁹³ Emsley, *The Great British Bobby*, p. 219 (although Emsley noted that the Sergeant's attitude towards the BUF changed after the Olympia rally.)

⁹⁴ *Ibid.*

⁹⁵ J. Morgan, *Conflict and Order: The Police and Labour Disputes in England and Wales, 1900-1939*, Clarendon Press (1987), p. 7.

⁹⁶ C. Williams, 'Rotten boroughs: the crisis of urban policing and the decline of municipal independence 1914-64', in J. Moore and J. Smith (eds), *Corruption in Urban Politics and Society, Britain 1780-1950*, Ashgate (2007).

authorities in favour of the Chief Constables.⁹⁷ Therefore, evidence of political partiality is arguably present at all levels of law enforcement in this era. Yet, despite the judgment of McHardie J in *Fisher v Oldham Corporation*⁹⁸ in 1930 that the police were officers of the Crown and not servants or agents of the local authorities, there was still significant ambiguity in public order law that provided a wide amount of discretion to the police and the judiciary.

In *Keeping the Peace: The Police and Public Order*, David Williams combined the disciplines of Law and History to produce a volume on public order that spans the 1850s to the 1960s. Written in 1967, its contemporary relevance is stimulated by the inclusion of the then recent disturbances between the Mods and Rockers. Williams approached the issue of public order as the struggle between maintaining freedom of speech and assembly and the preservation of the Queen's peace. The volume added valuable arguments and information relevant to the fascist/communist violence of the 1930s with discussions on preventive justice, private premises, the policeman on the spot, and insults, abuse and threats. There are few direct references to the BUF, (most notably in Chapter 6 'Prevention and Private Premises') and the legal discussion offered adds vital understanding of the law. For example, in discussing the nature of preventive justice he highlighted the vagueness of legislation and the courts of being of value to prosecutors, complainants and the police. Yet despite the 'sporadic and unpredictable' nature of intervention, preventive justice 'remains a valuable deterrent in the preservation of the Queen's Peace.'⁹⁹

⁹⁷ Ibid. p. 161.

⁹⁸ *Fisher v Oldham Corpn* [1930] 2 KB 364

⁹⁹ D. Williams, *Keeping the Peace: The Police and Public Order*, Hutchinson & Co Ltd (1967) pp. 112-113.

Charles Townsend's *Making the Peace: Public Order and Public Security in Modern Britain*, is a more recent account which principally uses a historical approach to examining disorder, particularly from the legal framework of public order policy and state management in Britain from the mid-nineteenth century to 1980s. Townsend dispels the myths of a 'golden age' in public order, highlighting the flawed perception from the 1990s standpoint that the 50 years between the Public Order Act 1936 and 1986 could be split into two unequal parts; the first being the period a relatively peaceful era before the disorders at Brixton in 1981. From Brixton onwards he highlighted the disorders at Southall, Toxteth, Handsworth, St Paul's and Tottenham, as well as a continuing decade of football hooliganism, terrorism and strike battles. He stated that there always seems to be a public perception of a recent deterioration in security and a growth in violent crime, a recurrent theme that always advocates 'a golden age' about 20 years previous. Reminding the reader of the 1974 Red Lion Square disorder and the 1972 miners' strike, Townshend argued that the division is less clear cut and whether there may be a 'mismatch between concept and reality'.¹⁰⁰ A further important feature of Townshend's *Making the Peace* is the identification of the notion that the public interest was largely believed to have been determined by the public themselves; a belief which he stated could not be widespread now (1993). A theme of the book is of the tension that grew between the police and the public in the 1970s and 1980s during violent clashes at protests and industrial disputes, and the growth of police militarism. This shift in attitudes is further attributed to the realisation that a 'right' to public meeting did not exist, although it was once believed to have. Townshend claimed that in losing this once perceived right, the 'right' to order was gained, although no right existed in legislative terms.

¹⁰⁰ C. Townshend, *Making the Peace: Public Order and Public Security in Modern Britain*, Oxford University Press (1993), p. 133.

The existing literature on the history of the BUF, the police, and public disorder needs to be integrated and combined with an analysis of legal sources in order to determine a better understanding of the relationship between the authorities and the activists of the far-Right. It is through the appreciation of social and cultural factors of the 1930s, as well as an understanding of contemporary police practice and the continual development of public order law that is central to the understanding of the use of police discretion in the interwar period.

4) Applying a Legal Lens to Research on British Fascism

Most textbook literature on British fascism considers the background of the Public Order Act 1936, and offers a brief synopsis of the policing of political violence. However, there has not been a critical legal investigation of significant court proceedings, developments in legislation, and the role and duty of the police in relation to far-Right activism. Although these legal developments have been examined in Morgan's monograph on Labour activism, and both Emsley and Morgan include references to the BUF in their research, an examination which places the fascist movement at the heart of a study of interwar public order law is critical if questions about the BUF's relationship with the police and the judiciary are to be satisfactorily answered. Establishing a historico-legal investigation would help determine the attitude of the authorities and either defend or reject the contemporary concern that far-Right groups were treated more leniently than Left-wing groups. An analytical analysis of contemporary law, as well as developments in public order legislation and policing, would offer a greater understanding of the relationship between British fascist movements and the authorities.

Within mainstream historical study, John Tosh argued that legal history ‘arouses relatively little interest among historians at present’ but highlights that court records are ‘probably the single most important source’ for the social history of the medieval and early modern periods.¹⁰¹ This is because a vast majority of the population were illiterate and left no records. However, historians should also not neglect the value of legal history to twentieth century research. This thesis demonstrates the value of legal sources in gaining a critical understanding of attitudes of the Government, the police and the judiciary towards competing extreme political movements, and reveals that assumptions about institutional partiality among these bodies of authority are misplaced. Analysis of Statute and common law will offer an understanding of how the criminal justice system operated before the era of the BUF, and how the authorities used these existing powers to deal with the public order issues associated with political extremism. In addition to case law, other contemporary sources such as police reports, Home Office files and newspapers will contribute to the history of the BUF. Such a study also expands our understanding of the relationship between fascism, the police, the courts and the National Government. This is achieved by utilizing criminology and law, which have discipline specific theory and function, that will advance the historical perspectives of British fascism, political violence and public order law to create a valuable, critical and balanced account that will be a key addition to the existing historiography.

¹⁰¹ J. Tosh, *The Pursuit of History*, Pearson Education Limited (2006) p. 106.

Chapter 2

***No Pasaran* – “They shall not pass”¹: Legal Responses to Public Processions**

I think there is no doubt that this disorder was largely due to the adoption of semi-military evolutions by the Fascists, their marching in formation, and their general behaviour, which was regarded by the crowd as provocative.²

1) Introduction

A dominant feature of the BUF's propaganda campaign was the organisation of public processions which attracted media attention and advertised their political agenda to communities all over Britain. This method drew hostility from their political opponents and, as legislation was ill-equipped to deal with the disorder that this activity caused, police responses varied across the United Kingdom. Following widespread disorder in East London on 4 October 1936, as 100,000 anti-fascists took to the streets to prevent the BUF's fourth anniversary march, the Government took action and the Public Order Act 1936 was passed, which gave the authorities wider powers to manage or prohibit public processions.

The current historiography that analyses the legal challenge presented to the authorities by the public processions of the BUF has been led by Richard Thurlow and the collaborative work of Keith Ewing and Conner Gearty.³ Thurlow highlighted that under Home Office advice, the Metropolitan Police were more cautious in

¹ This was a Spanish Civil War slogan used by the anti-fascists during their fight to prevent the BUF's East London procession in October 1936.

² *HC Deb* 09 April 1934 vol 288 cc15. Home Secretary Sir John Gilmour on disorder at a fascist meeting in Bristol.

³ In particular see Ewing and Gearty, *The Struggle for Civil Liberties*, and Thurlow, 'The Straw that Broke the Camel's Back' and R. Thurlow, *The Secret State: British Internal Security in the Twentieth Century*, Blackwell Publishers (1994)

policing the BUF than some provincial police forces. He argued that, despite the Home Office view that the police had no power to interfere with legal public processions, the interference of Chief Constables outside of the Metropolitan Police district had 'only avoided legal setback because no one had challenged their instructions.'⁴ Therefore, it was this underestimation of the preventive powers of the police and the Home Office's knowledge of Mosley's legal ability and his dedication in defending his 'rights' that made them more cautious in their policing of his activism. In contrast Ewing and Gearty argued that the Home Office tolerated BUF activism and violence and supported the police who were, 'prepared to go to considerable lengths to protect the freedom of the fascists.'⁵ They argued that the Government only took legislative action to prevent provocative fascist activism after the Battle of Cable Street because their 'hand was forced by popular resistance.'⁶

This chapter counters Ewing and Gearty's notion that the Government were tolerant of fascist activism and the police were pro-fascist. Therefore, in order to illuminate the historical and legal context of these official responses to fascist processions in the 1930s, this chapter will identify and analyse the key legal developments and debates which preceded them. Firstly, the legal definitions of 'public assembly' and 'public procession' are clarified and evaluated. Subsequently, *Beatty v Gillbanks*,⁷ which established the first common law judgment regarding the freedom to organise public processions is analysed. The drafting of the Processions (Regulations) Bill 1932, which was a response to the activities organised by the NUWM is then examined. Two years later, the Public Order Bill 1934 was drafted as a response to the continued activity of the NUWM, but it also reflected measures to eliminate the

⁴ Thurlow, *The Secret State*, p. 198.

⁵ Ewing and Gearty, *The Struggle*, p. 329.

⁶ *Ibid.* p. 330.

⁷ *Beatty v Gillbanks* [1881-1882] LR 9 QBD 308.

escalating disorder caused by the BUF. Legislation was finally enacted two years later following an escalation of BUF related violence which included the Battle of Cable Street on 4 October 1936. The resulting s3 Public Order Act 1936 was mandated to counter the problem of disorder associated with public processions. The political debates which preceded this legislation are then assessed and the implications of the statute are analysed. Finally, the legacy of this Act in the immediate post-war era is evaluated with reference to Mosley's Union Movement.

By analysing the responses to public processions before the 1930s and in the post-World War Two period, the facilitation or proscription of BUF activism can be seen as part of a wider narrative of inconsistent police action which reveals more about the nature of police discretion and the vagueness of the breach of the peace doctrine than arguments concerning political partiality. Furthermore, Government responses demonstrate an ebb and flow of commitment towards civil liberties which was largely dependent on the perceived threat to national security, yet by the post-war period this was eclipsed by a commitment to collective security.

2) Legal Definitions

2.1) Public Assembly

By its nature a public procession is a form of public assembly, and is therefore subject to the same common law authority under the breach of the peace doctrine which regulates what would deem an assembly to be either lawful or unlawful. In *Beatty v Gillbanks*, Field J quotes Hawkins' Pleas of the Crown, s. 9:

An unlawful assembly according to the common opinion is a disturbance of the peace by persons barely assembling together with the intention to do a thing which if it were executed would make them rioters, but neither actually executing it nor making a motion toward the execution of it... But this seems

to be much too narrow a definition. For any meeting whatever of great numbers of people, with such circumstances of terror as cannot but endanger the public peace and raise fears and jealousies among the king's subjects, seems properly to be called an unlawful assembly, as where great numbers, complaining of a common grievance, meet together, armed in a warlike manner, in order to consult together concerning the most proper means for the recovery of their interests; for no man can foresee what may be the event of such an assembly.⁸

Under this definition, the threat of any potential disorder comes from within those assembled, placing an important emphasis on the purpose and conduct of the assembly itself in judging whether it should be considered either lawful or unlawful. Unless the conduct of the members of a public assembly violates any statutory law, then their assembly must be considered lawful. The freedom to assemble in public was not legally enshrined as a right before the Human Rights Act 1998 and the incorporation of the ECHR, but through the concept of residual freedom, people were at liberty to form public assemblies provided the conduct of its members remained lawful. No statutory law to restrict public assemblies existed until the Public Order Act 1986. Under s14 of this Act, the senior police officer can impose certain conditions upon public assemblies provided certain tests are met.⁹ However, a procession is more than just an assembly of persons and further legal consideration of what constitutes a procession is necessary.

2.3) Public Procession

When debating the Party Processions (Ireland) Bill in the House of Commons in 1832, the problem of defining party processions was highlighted by Tory MP Sir Robert Peel who stated, 'we can tell well enough, in common parlance, what is the meaning of those words, but it would be extremely difficult to point out the meaning

⁸ Cited by Field J, in *Beatty v Gillbanks* [1881-1882] LR 9 QBD 308, at 314, Hawkins' Pleas of the Crown (1716-1824).

⁹ See Introduction for legal definitions on 'public assemblies' and 'breach of the peace'.

in an Act of Parliament.¹⁰ The Party Processions (Ireland) Act 1832 was designed to eliminate the disorder caused by the escalating culture of parading which included the numerous Protestant processions of the Orange Order and Catholic processions of the Ribbonmen. These parades became a trigger for sectarian violence and the 1832 Act carried the repressive measure of banning such processions. Although this Act did not definitively state what a procession was, it defined what type of procession could be prohibited. This included:

‘any Body of Persons who shall meet and Parade together, or join in Procession, for the purpose of celebrating or commemorating any Festival, Anniversary or Political Event relating to or connected with and Religious distinction or difference, and who shall bear, wear, or have amongst them any Firearms or other offensive Weapon, or any Banner, Emblem, Flag or Symbol, the display whereof may be calculated or tend to provoke animosity between His Majesty’s Subjects of different Religious Persuasions, or who shall be accompanied by any Music of a like nature or tendency, shall be and be deemed an unlawful Assembly,’

This elaborate description was drafted in order to permit other innocent processions to proceed unaffected by the Act. When legislation was introduced to England, Wales and Scotland, to counteract the disorder caused by public processions, under the Public Order Act 1936, the definition provided was more general and far-reaching. The definition of ‘public procession’ in s9 Public Order Act 1936 was unconstructively termed ‘a procession in a public place’. The same definition was again offered in s16 Public Order Act 1986. While further interpretation is given to ‘public place’, no definition of ‘procession’ exists in statute. In legal terms, ‘procession’ can therefore embrace an extensive range of conditions.¹¹ At common law, there has been further debate on the definition of procession in relation to an

¹⁰ *HC Deb* 14 June 1832 vol 13 cc725.

¹¹ P. Thornton et al, *The Law of Public Order and Protest*, Oxford University Press (2010) p. 101

appeal by UM member Alfred Flockhart who was charged with organising a public procession during the duration of a s3(3) ban. This is discussed later in the chapter.

With such a wide legal definition that incorporates any manner of people proceeding in orderly succession or moving along a route, processions can take the form of a ceremonial or military style march, a commemorative parade with music and banners, or a mobile demonstration or protest. It incorporates all political and religious organisations and movements as well as social groups and clubs. This wide ranging description has continued to cause controversy as regional bans on processions have also affected groups and clubs whose processions would not typically pose any threat to public order. This presents the question of whether it can be morally justified to ban all processions, rather than those likely to provoke disorder?

3) *Beatty v Gillbanks*: A Common Law Solution to Regulating Processions?

The Salvation Army was formed in 1865 by the former Methodist preacher William Booth, and is a protestant movement which was modelled on military lines with uniformed members receiving rank as either officer or soldier. With a musical band, they marched in formation playing music and singing Christian songs as they fought a moral crusade against alcohol, gambling and vice. In the early 1880s the Salvation Army's activities came to prominence across Britain after many of their marches ended in violence following the organised disruption of the Skeleton Army. The Skeleton Army was a national movement which was often led in different communities by disgruntled landlords and brothel owners who were hostile towards

the Salvation Army's crusade.¹² In *Beatty v Gillbanks*, the Skeleton Army are simply described as, 'another organized band of persons... who also parade the streets, and are antagonistic to the Salvation Army and its processions.'¹³ In November 1882, the *Bethnal Green Eastern Post* reported that the Skeleton Army consisted of 'publicans, beersellers and butchers... [and] a large percentage of the most [consummate] loafers and unmitigated blackguards London can produce.'¹⁴

In several regions the Justices of the Peace took the preventative measure of securing public order by prohibiting the processions of the Salvationists. One of the towns that issued a public notice signed by the Justices of the Peace was Weston-super-Mare. Following a succession of violent incidents at Salvation Army processions the public notice stated that, 'we do therefore hereby require, order, and direct all persons to abstain from assembling to the disturbance of the public peace in the public streets.'¹⁵ Despite the Justices' public notice, William Beatty led a Salvation Army procession through the town's public thoroughfares. After refusing a police sergeant's order to disperse, Beatty was arrested and charged with 'unlawfully and tumultuously assembling with diverse other persons... in a public thoroughfare... to the disturbance of the public peace, and against the peace of the Queen.'¹⁶ No statutory authority was stated at the Petty Sessions held at the Weston-super-Mare Town Hall, and the case hinged on the authority of the Justices' public notice and the duty of the police to keep the peace. For the defence, Mr Sutherst 'contended that

¹² The Salvation Army International Heritage Centre, http://www1.salvationarmy.org.uk/uki%5Cwww_uki_ihc.nsf/stc-vw-sublinks/449FB0992A296F8E8025704C00539A3A?openDocument accessed on 23 Oct 2011

¹³ [1881-1882] LR 9 QBD 308, at 309.

¹⁴ The Salvation Army International Heritage Centre, http://www1.salvationarmy.org.uk/uki%5Cwww_uki_ihc.nsf/stc-vw-sublinks/449FB0992A296F8E8025704C00539A3A?openDocument accessed on 23 Oct 2011. The term 'blackguards' refers to people who act in a dishonest, unprincipled and contemptible way.

¹⁵ [1881-1882] LR 9 QBD 308, at 312.

¹⁶ *The Bristol Mercury and Daily Post*, 30 March 1882.

there had been a very gross violation of constitutional rights,' and insisted that it was the duty of the police to protect the defendants during their procession. He continued by rejecting the legality of the public notice by stating, 'The proclamation was so much waste paper' and illustrated this by tearing the document into fragments. He continued, 'if the magistrates convicted these men they would act in an exceedingly unconstitutional manner.'¹⁷ Nevertheless, the magistrates considered that the police did not exceed their duty but acted with a great amount of discretion. Beatty and others were 'severally bound in their own recognizances, with two sureties, to keep the peace and be of good behaviour for the term of twelve calendar months, and in default to be imprisoned for three calendar months, or until they should comply with such order.'¹⁸ Following this conviction, Beatty and two other leaders of the Salvation Army were granted an appeal at the Queen's Bench Division.

The serious disturbances at Weston-super-Mare were not isolated. Opposition to the Salvationists' marches from the Skeleton Army and local communities caused disorder across England and formed the basis of questions in the House of Commons to Sir William Harcourt, Liberal Home Secretary and former Solicitor General, on how to manage the increasing disturbances. Harcourt tentatively advised local magistrates to preserve the peace as they thought right, but highlighted that the issuing of proclamations to forbid processions had been successful in Exeter, Stamford, and Salisbury. However, he also ambiguously added:

I may say that those people cannot be too strongly condemned who attack persons who are only meeting for a lawful and, I may say, laudable object; but, on the other hand, I cannot but condemn the imprudence of those who encourage these processions, which experience has shown must lead to disorder and violence.¹⁹

¹⁷ *The Bristol Mercury and Daily Post*, 30 March 1882.

¹⁸ [1881-1882] LR 9 QBD 308. at 308.

¹⁹ *HC Deb* 16 March 1882 vol 267 cc991.

In one instance Harcourt's advice was to prohibit processions if they were likely to cause a breach of the peace. Despite this, he then continued to defend those who met for a lawful and laudable object, and condemned those who attack the processions. This indecisiveness prompted a deriding letter to the *Morning Post*, signed by 'One of the Stupid Party'²⁰ urging Harcourt to clarify the position of the magistrates. The author enquired whether the magistrates should stop the processions, or allow them to continue and stop the roughs, questioning whether the Home Secretary only proposed 'to declare the magistrates to be wrong whichever course they pursue?'²¹

It is within this context of ambiguous Home Office advice regarding public processions that placed such importance on the outcome of *Beatty v Gillbanks*. At the Queen's Bench Division, Field and Cave JJ, held that the appellants could not be rightly convicted of unlawful assembly as there was no authority for the proposition that, 'a man may be convicted for doing a lawful act if he knows that his doing it may cause another to do an unlawful act.'²² Although this ruling seemed to have set a new legal precedent which potentially provided legal protection to lawful public assemblies, such as public meetings or processions, the vagueness of the judgment has been criticised by academic lawyers such as Harry Street who declared:

The court did not make clear... whether they were laying down a general rule that if others committed the disturbance those who held the meeting were not guilty, or whether they merely found on the facts of the case that the accused

²⁰ This was a sarcastic signature by an anonymous member of the Conservative Party. It refers to the Liberal John Stuart Mill's assertion that the Conservative Party was the stupid party. He famously clarified this statement in a debate in the House of Commons: 'What I stated was, that the Conservative party was, by the law of its constitution, necessarily the stupidest party. Now, I do not retract this assertion; but I did not mean that Conservatives are generally stupid; I meant, that stupid persons are generally Conservative.' *HC Deb* 31 May 1866 vol 183 c1592.

²¹ *The Morning Post*, 22 March 1882.

²² [1881-82] LR 9 QBD 314.

did not cause the disturbance because it was not the natural and probable consequence of their procession that the Skeleton Army should create the commotion.²³

In practice, subsequent judgments, such as *Wise v Dunning*²⁴ in 1902, have taken further individual factors into consideration. George Wise was a Protestant lecturer in Liverpool whose speeches regularly caused an obstruction of the highway, as well as disorder between his own supporters and his Catholic opponents. It was recognised that he 'used gestures and language which were highly insulting to the religion of the Roman Catholic inhabitants' and on one occasion he told his supporters that the Catholics were going to bring sticks to the next meeting, thereby prompting his own supporters to reciprocate.²⁵ Lord Alverstone CJ, citing *Beatty v Gillbanks* and *R v Londonderry JJ*,²⁶ deduced that, 'there must be an act of the defendant, the natural consequence of which, if his act be not unlawful in itself, would be to produce an unlawful act by other persons.'²⁷ The 'natural consequence' element was clarified by Channell J:

the law does not as a rule regard an illegal act as being the natural consequence of a temptation which may be held out to commit it... The proposition is correct and really familiar; but I think the cases with respect to apprehended breaches of the peace shew that the law does regard the infirmity of human temper to the extent of considering that a breach of the peace, although an illegal act, may be the natural consequence of insulting or abusive language or conduct.²⁸

Here, the acts of Wise and Beatty can be distinguished. Although the Salvation Army's procession may have ended in violence, the disorder could not be judged to have been a natural consequence of the procession itself. In contrast, any disorder resulting from the insulting and abusive public lectures delivered by Wise and his

²³ H. Street, *Freedom, The Individual and the Law*, Penguin Books (1963) pp. 53-54.

²⁴ *Wise v Dunning* [1902] 1 KB 167. See also Chapter 4 below.

²⁵ *Ibid.*

²⁶ *R v Justices of Londonderry* (1891) 28 LR Ir 440, Ir QBDC. In this case,

²⁷ *Ibid.* at 175-176

²⁸ *Ibid.* at 179-180.

incitement to violence regarding the use of sticks must be considered as a natural consequence of these actions. This judgment strengthened the breach of the peace doctrine, recognising that public disorder could be the natural consequence of conduct or language that does not necessarily contradict any statutory law.²⁹ Therefore, a public assembly does not become unlawful simply because some other body threatens to disturb it, but if it is considered that the natural consequence of an assembly is for it to incite disorder then its prohibition would be supported by the judiciary. Assessing whether disorder is the natural consequence of someone's conduct is highly discretionary which ultimately means that such judgments will often be inconsistent.

In *Introduction to the Study of the Law of the Constitution*, which was last amended by the author in 1908, constitutional theorist, A V Dicey, defended the liberty of a group of people to assemble and process together in the public streets by stating:

if the right of A to walk down the High Street is not effected by the threats of X, the right of A, B, and C to march down the High Street together is not diminished by the proclamation of X, Y, and Z that they will not suffer A, B, and C to take their walk.³⁰

Dicey advocated two limitations towards the freedom of A, B, and C to assemble in public. First, he stated that if the conduct of members assembled was in any way unlawful and provoked a breach of the peace then that would constitute an unlawful assembly; second, he stated that if the conduct of those assembled was lawful, but had provoked a breach of the peace, and the magistrates or constables decided that it was impossible to restore order by any other means, then they have the power to

²⁹ Threatening, abusive and insulting words or behaviour with intent to provoke a breach of the peace, or whereby a breach of the peace is likely to be occasioned was made an offence under s5 Public Order Act 1936. Similar regional offences existed under local acts and in the Metropolitan district under s54(13) Metropolitan Police Act 1839. See Chapter 4 below.

³⁰ A. V. Dicey, *An Introduction to the Study of the Law of the Constitution*, 10th Edition, Macmillan Press Ltd (1959) p. 274.

disperse them and any failure of the crowd to disperse would then constitute an unlawful assembly.

The first limitation requires further clarification. For example, what statutory offence may be violated by the members of an assembly to make it unlawful? Although riotous and tumultuous behaviour of members of an assembly would deem it unlawful, the authorities have also frequently utilised statutes relating to the obstruction of the highways to suppress processions that are otherwise law abiding.

4) Obstruction of the Highway: The use of Existing Legislation to Regulate Processions

Since *Beatty v Gillbanks*, the authorities frequently regulated public processions by invoking legislation such as s72 Highway Act 1835 and s28 Town Police Clauses Act 1847. These provisions both deal with the wilful obstruction of the passage of footways or public thoroughfares, yet they were enacted to prevent obstruction caused by livestock, carts or carriages.

The powers relating to processions addressed in s21 Town Police Clauses Act 1847 provide that:

The commissioners may from time to time make orders ... for preventing obstruction of the streets within the limits of the special Act in all times of public processions, rejoicings, or illuminations, and in any case when the streets are thronged or liable to be obstructed,

A deputation between the Manchester Watch Committee and the Home Office in 1936 revealed that powers relating to the regulation of processions in s213 Manchester Police Act 1944 (a counterpart of the provisions in s21 Town Police Clauses Act 1847 and s52 Metropolitan Police Act 1839) were 'not so valuable as they may on the surface appear to be.' The deputation's resulting memorandum declared that the experience of the police authority was that there was 'often some

attempt on the part of the promoters of the procession to disregard the regulations laid down.³¹ It has also been highlighted by Ewing and Gearty that these provisions were more concerned with keeping the thoroughfares clear than with political protest.³² As these provisions could be utilised against public assemblies, they were equally effective when directed to disperse or prohibit either public processions or public meetings.

The danger of selective law enforcement is highlighted by such legislative measures relating to obstruction of the highway being regularly invoked to disperse socialist meetings. An early example of a prosecution was of W B Barker, who appeared at Thames Police Court, London, in 1885. He was charged with 'causing an obstruction by addressing a crowd of persons in a public street', and in reply claimed that, 'it was the right of every Englishman to speak in a public street.'³³ The application of ambiguous or inappropriate statutory powers that infringe the liberty of the subject created the danger that they would be inconsistently applied, which effectively provided opportunities for the police to exercise political partiality and selectively enforce the law. The magistrates at Thames Police Court even demonstrated such bias as they declared the socialist defendant was 'preaching a very mischievous doctrine' despite the fact that he was not on trial for what he said, but for the obstruction that he caused.

In 1886, Llewellyn Atherley-Jones, a radical Liberal MP and son of the prominent Chartist Ernest Jones, questioned the Home Secretary on the recent prosecutions of socialist lecturers for the alleged obstruction of certain streets in London. The Conservative Home Secretary, Henry Matthews, responded that the Home Office

³¹ TNA, HO 144/20159, 'Memorandum', p.10.

³² Ewing and Gearty, *The Struggle*, p. 306, n150.

³³ *The Huddersfield Daily Chronicle*, 11 Aug 1885 pg. 3.

had not given any special instruction to the police regarding meetings in the street and that the 'instructions of the Chief Commissioner seem to me to be quite proper and in accordance with the law'.³⁴ The police had therefore found a legal, albeit questionable, method of maintaining public order regarding 'lawful' public assemblies. Although, as such powers were not specifically directed towards maintaining public order at public assemblies, they were highly discretionary and susceptible to selective utilization.

5) Responses to the Processions of the Far-Left

5.1) The Emergency Powers Act 1920

The rise of far-Left activism in the period following the First World War presented a significant challenge to public order and national security. One of the first peace time reactions to this threat was the Emergency Powers Act 1920 which authorises the proclamation of a state of emergency if:

at any time it appears to His Majesty that any action has been taken or is immediately threatened by any persons or body of persons of such a nature and on so extensive a scale as to be calculated, by interfering with the supply and distribution of food, water, fuel, or light, or with the means of locomotion, to deprive the community, or any substantial portion of the community, of the essentials of life,

The proclamation could remain in force for one month and another proclamation would need to be issued to extend the state of emergency. Following the proclamation being made, s2 provides that 'it shall be lawful for His Majesty in Council, by Order, to make regulations for securing the essentials of life to the community'. Richard Thurlow asserted that the use of this state power, which could 'censor news, direct labour, detain or restrict movement of individuals without due

³⁴ *HC Deb* 21 Sep 1886 vol 309 c1103.

process of law', represented the real 'extremism of the centre'.³⁵ Among the regulations that suppressed civil liberties and political freedom was Emergency Regulation 22, which provided chiefs of police with the power 'to prohibit meetings and marches with the approval of the Home Secretary if they feared disorder would arise'.³⁶ This power found favour from Metropolitan Police Commissioner William Horwood in 1926, after the Emergency Powers had been in force during the General Strike. In a letter to the Home Secretary, he argued that this power should be embodied in the general law.³⁷ This law provided the police with wide discretion to prohibit political activism on the basis of an anticipated breach of the peace. These wide powers were naturally opposed by the political Left. Labour MPs Ernest Thurtle, David Grenfell, James Hudson, John Bromley and Henry Thomas all advocated for the removal of Regulation 22 in Parliament in May 1926.³⁸ Thurtle's attack on the Regulation was also accompanied by a condemning evaluation of the magistrates by challenging their political partiality:

the magistrates are drawn from political parties hostile to the Labour Party, and... it is inevitable that their political prejudice or partisanship will come into play and they will deliberately make use of the power conferred upon them by this regulation to prevent perfectly legitimate Labour and Socialist meetings and processions.³⁹

The motion to delete Regulation 22 from the enforcement of the Emergency Powers Act during the 1926 General Strike was easily defeated with only 89 votes in favour and 299 against.⁴⁰

5.2) The Hunger Marchers

³⁵ Thurlow, *The Secret State*, p. 9.

³⁶ Morgan, *Conflict*, p. 254.

³⁷ *Ibid.* Referenced from HO 144/8014/49455/14, 'Commissioner of Metropolitan Police to Home Secretary, 8 Oct 1926.'

³⁸ *HC Deb* 06 May 1926 vol 195 cc453-597, 507-8, 516, 540-1.

³⁹ *Ibid.* at c508.

⁴⁰ *Ibid.* at 550.

In addition to other Left wing activism, the NUWM organised a series of hunger marches around Britain. The NUWM, which was formed in 1921, was not a political organisation but members of the CPGB played a prominent role in its administration. Their first national march was staged in 1922 when the British unemployed from cities as far apart as Glasgow and Plymouth marched to London and requested a deputation with the Conservative Prime Minister Bonar Law. The largely Conservative press had first ignored the marches, but as the processions approached London, NUWM organiser Wal Hannington recalled, ‘the whole of the capitalist press became hysterical, and news columns were filled with scare articles about “Secret meetings of the marchers,” “Bolshevik gold,” “Firebrand leaders,” and so on’. He continued to recall an article from the *Pall Mall Gazette* entitled ‘The Red Plot’ in which, ‘The marchers were accused of bearing firearms, and the leaders were made out to be rogues and scoundrels of the worst type, and of course, in the pay of Bolshevik Russia.’⁴¹

An example of how disorder was sparked occurred during the fourth national hunger march in October 1932. 100,000 demonstrators descended on Hyde Park, London, the number of police on duty was 2,600, including 136 mounted police and 750 special constables. The hostile hunger marchers at the Marble Arch end of Hyde Park were reported to have been abusive to the special constables stationed by the gates. Accounts state that the special constables became resentful to ‘the general attitude of the rabble’ and struck out at them with their batons. Unable to then hold their position the special constables were supported by a mounted baton charge.⁴²

⁴¹ W. Hannington, *Unemployed Struggles 1919-1936*, Lawrence and Wishart Ltd (1979) p. 84.

⁴² P. Kingsford, *The Hunger Marches in Britain 1920-1939*, Lawrence and Wishart Ltd (1982) p. 154

Two independent observers⁴³ recorded that the unemployed were booing the police but that there was no sign of disorder or disturbance. They declared that 'People were forced to run for their lives in order to escape being trampled upon by the police horses or beaten by staves.'⁴⁴ 17 arrests had taken place and Hannington claimed that there was a general impression within the press that the fighting at Hyde Park and another incident at Trafalgar had been caused by the special constables. Even the *Police Review* stated:

An excellent fellowship exists, [between the constable and the special] but there is a feeling that in this difficult time the appearance of the special is calculated to cause trouble rather than avoid it. At the meetings and hunger marches, the special is an irritant, rather than an antiseptic.

This striking admission regarding the defectiveness of the special constables and a retrospective analysis of the cause of disorder during this incident demonstrates that the hunger marchers were not necessarily the instigators of violent clashes between themselves and the police. Historian Jane Morgan argued that the police's statutory powers relating to public processions were weak and their methods may have been found to have had no legal basis if they were contested in court. She stated that although they could deal with disorder, they could not do so beforehand and could only act when disorder arose. Additionally, when the behaviour of the marchers was not riotous, there was difficulty in proving it to be an unlawful assembly.⁴⁵ This led Metropolitan Police Commissioner Lord Trenchard to write to the Home Secretary declaring:

⁴³ The observers were Reginald Reynolds, general secretary of the No More War Movement, and his friend James Grant who wanted to witness first hand 'how much truth there was in the statements that the police treated the unemployed demonstrations as an occasion for beating people up'. Ibid, p. 154-155.

⁴⁴ Ibid. p. 155.

⁴⁵ Morgan, *Conflict*, p. 254.

I consider that there is a very reasonable case for prohibiting *all* processions (other than ceremonial processions, the Lord Mayor's show etc.) in the central area at any rate on all days but Saturday and Sunday.⁴⁶

This demonstrates that Trenchard believed that the limits of his discretion in dealing with public processions did not extend to the preventive power of proscription and he used his influence to persuade the Home Secretary that new legislation was needed. Furthermore, Morgan's assessment of the uncertain legal capacity to regulate or proscribe public processions in the period before the Public Order Act supports Thurlow's belief that the Home Office were more cautious when managing with the BUF's activism because of Mosley's ability to mount a legal challenge to oppressive or unlawful police tactics.⁴⁷ However, the shortcomings of legislative powers relating to public processions were considered before the era of the BUF and were significantly considered in response to the NUWM.

5.3) The Processions (Regulations) Bill 1932

The frequent disorder, and sporadic fighting that broke out between the hunger marchers and the police, prompted the drafting of the Processions (Regulations) Bill 1932. The Bill was drafted by representatives of the Home Office, the Director of Public Prosecutions, representatives of the Scottish Office, the Ministry of Health, the Ministry of Labour, and the Metropolitan Police Commissioner. These records reveal the Cabinet Committee's debates and several drafts of the proposed Bill.

Clause 1 was directed to suppress the national hunger marches of the NUWM. It provided that:

⁴⁶ Ibid. quote referenced from MEPO 2/6269, 'Trenchard to Home Secretary, 27 Oct 1932.'

⁴⁷ Thurlow, *The Secret State*, p. 198. Here Thurlow states, 'The Home Office was particularly conscious of the fact that Mosley was litigious, stood up for his rights, had never lost a case in court, and was therefore loath to overreach police powers in dealing with him.'

If the Secretary of State is satisfied that arrangements are about to be made, or are being made, or have been made, for concentrating persons outside the areas in which they ordinarily reside, or for causing persons to go in procession to any place outside the area in which they ordinarily reside, and that the concentration or procession is likely to result – (a) in serious disorder; or (b) in such abnormal demands being made upon poor law authorities as to cause serious derangement in the administration of public assistance, he may by order prohibit the concentration or procession; and, accordingly, any concentration or procession so prohibited shall be unlawful.⁴⁸

The implications of clause 1 were more extensive than just suppressing the hunger marches and it potentially provided the authorities with far reaching powers to prohibit any public assembly in which a breach of the peace could be anticipated, or participants travelled to outside their normal area of residence to take part.

Clause 2 provided local police authorities with the power to temporarily ban either all processions or selected processions, following a successful application to the Secretary of State. The Home Office Memorandum which accompanied the Processions (Regulations) Bill, authored by Permanent Under Secretary of State for the Home Office Sir Russell Scott, recognised that the power to prohibit particular processions could potentially be criticised for unfair discrimination on political grounds. Despite this, Scott declared, 'if no action were possible short of total prohibition of all processions, even the most innocent, the power would be so drastic as to restrict its use within unnecessarily narrow limits, and its usefulness would be seriously impaired.'⁴⁹

The draft Bill demonstrated the dangerous escalation of legal powers that the Home Office were prepared to take in order to prohibit a recurrence of the hunger marches. It was also admitted in the Memorandum that there was an opportunity in the drafting of new legislation, to not just counter the problem faced by the hunger marchers, 'but

⁴⁸ TNA HO144/18294 'Draft of a Bill to Provide for the prohibition of Concentrations and Processions likely to result in disorder or public inconvenience'.

⁴⁹ TNA, HO144/18294 'Home Office Memorandum 1932' p. 5

also with the control of processions in London itself and in other populous areas.⁵⁰ Such provisions as those mentioned in clauses 1 and 2 had the potential to curtail civil liberty, but would also have been open to political abuse, discrimination and selective enforcement. Of those involved in its drafting, only the representative from the Ministry of Labour had voiced concerns whether such legislation would be either practical or effective. The Attorney General declared that the prohibition of processions by the Secretary of State would lead to 'intolerable political difficulty' and suggested that the existing law regarding processions was already adequate. In consideration of the laws regarding the obstruction of the highways, he declared that 'Any new powers to grant or refuse orders for processions should be taken on traffic grounds alone.'⁵¹ In December, 1932, the Cabinet decided that 'further legislative measures should not be contemplated until an extended trial had been given to the method of asking courts of summary jurisdiction to bind over the organisers beforehand.'⁵²

This tactic was utilised the same month as NUWM organizers Tom Mann and Emrhys Llewellyn were bound over to keep the peace and be of good behaviour in order to prevent an attempted deputation with the Prime minister. At Bow Street Police Court on 17 December 1932, prosecuting on behalf of the Director of Public Prosecutions, Mr Wallace recited letters sent from Llewellyn to the Prime Minister and several articles from the *Daily Worker* which, 'showed clearly that a mass meeting was to take place to enforce the receiving of the deputation mentioned.'⁵³ The prosecutor cited s23 Seditious Meetings Act 1817, which prohibited meetings of 50 persons or more within a mile of Westminster Hall when Parliament was sitting,

⁵⁰ Ibid. p. 2

⁵¹ TNA, HO144/18294 'Attorney-General's Memorandum'

⁵² TNA, HO144/18294 'Duties and Powers of the Commissioner of the Police of the Metropolis' p. 7

⁵³ *Nottingham Evening Post*, 17 Dec 1932.

demonstrating that the meeting promoted by the NUWM would be illegal. Furthermore, other NUWM activity had also caused concern for the authorities over the legality of their activism.

The month before Mann and Llewellyn were bound over, Sid Elias of the NUWM was sentenced to two years imprisonment for unlawfully soliciting and inciting Llewellyn and Hannington 'to cause discontent, dissatisfaction, and ill-will between different classes of His Majesty's subjects and to create public disturbances against the peace.'⁵⁴ The letter, which Elias had sent from Moscow, contained instructions to Llewellyn and Hannington promoting different courses of agitation and activism. Additionally, although the special police were in part culpable of some of the disorder at the NUWM demonstration in Hyde Park on the 28 October, this did not mean that the authorities took the view that the demonstrators were entirely innocent. Many media reports of the disorder mention incidents of stones, mud and coal being thrown from different parts of the crowd which smashed shop windows and struck police vehicles. There were also accounts of several crowd surges from the demonstrators which were reported to have crushed female shoppers.⁵⁵ Moreover, reports from Special Branch informants had revealed that the marchers were encouraged to make the march 'as spectacular as possible [with] as many clashes with the police as possible'. The march leaders also advocated that they should create disturbances at Public Assistant Committees, at the Houses of Parliament and at embassies, and to create 'as much trouble as possible for the police'. In addition, it was instructed that 'trade union banners [were] to be used at demonstrations and then used in open conflict with the police.'⁵⁶ The evidence here

⁵⁴ *The Times*, 5 Nov 1932.

⁵⁵ *Western Times*, 28 October 1932; *Dundee Courier*, 28 Oct 1932.

⁵⁶ Kingsford, *The Hunger Marchers*, pp. 140-141, citing MEPO 2/3064.

suggests that activists from the NUWM had recently and willfully engaged in disorder and were encouraged to do so by their leaders. In consideration of this, the authorities' anticipation of further disorder may not have been so questionable.

Despite the recent NUWM disorder, Mann and Llewellyn still wanted to present the petition to Parliament. In anticipating further potential disorder, but this time in the form of an unlawful assembly outside Parliament, the magistrate Sir Chartres Biron 'ordered both defendants to be bound over in their own recognisances in £200, and to find two sureties in £100 each to keep the peace and be of good behaviour for twelve months.' They refused and were each imprisoned for two months.⁵⁷ Here, the actions of the Home Office and the magistrates demonstrate the extent of their discretion in preventing an anticipated breach of the peace. Scholars such as Ewing and Gearty keenly identified the injustice to Mann and Llewellyn while dismissing elements of the legal argument used against them in an effort to prove that the National Government's intension was to imprison the four leaders of the NUWM as they were losing patience with the hunger marchers.⁵⁸

The Home Secretary defended the action by stating:

I believe that we were within our rights, that what we did was calculated to cause less disturbance—it was done for that reason and that reason alone—and that these men could have given the undertaking, which was no outrageous undertaking and one which they could have given without any dereliction of their position, without giving away any right of proper free speech or attendance at political meetings. They refused to do it, and they have suffered the consequences.⁵⁹

⁵⁷ Although there is no mention of the instructions for agitation by Elias in the magistrates binding over of Mann and Hannington, Sir Chartres Biron presided over both cases. The letter was also printed in *The Times* on the 5 November 1932.

⁵⁸ Ewing and Gearty, *The Struggle*, p. 224-227. Elias and Hannington were already imprisoned.

⁵⁹ *HC Deb*, 22 Dec 1932, vol 273 cc1300.

This defence needs to be questioned on two counts. Were the powers used consistent with other binding over orders? And, were the authorities concerned for a potential breach of the peace legitimate?

The binding over of Mann and Llewellyn was partially consistent with *Wise v Dunning* and *Lansbury v Riley*.⁶⁰ In each of these cases, the binding over order was issued against speakers who had encouraged violence or illegal behaviour. *Wise*, as discussed above, had encouraged his supporters to bring sticks to the next meeting in anticipation that his Roman Catholic opponents would also bring weapons. While campaigning for female suffrage in 1913, George Lansbury, who had resigned his Labour seat in 1912, advocated that the suffragettes continued to use militancy and tactics which involved breaking the law. Where these differed from the Mann and Llewellyn's binding over, is that it was not proved that Mann and Llewellyn were involved with the previous disorder or of advocating it. Here, it was their association with the NUWM that gave cause for the magistrate to anticipate that their actions would result in a breach of the peace and why sureties were deemed necessary. While this point seems particularly oppressive, it must be remembered that the 'power to bind over a person before the court to keep the peace or to be of good behaviour does not depend on a conviction'.⁶¹ As a form of preventive justice, it is employed to prevent breaches of the peace rather than to serve as a punishment. However, Harry Street stressed that the requirement to enter into recognizance and find sureties can indeed be a punishment in itself, especially in the case of Lansbury

⁶⁰ *Lansbury v Riley* [1914] 3 KB 229.

⁶¹ Supperstone, *Law of Public Order*, p. 315 n8.

who was unable to pay the sums fixed by the magistrate and in default of paying, was imprisoned for three months.⁶²

Whether Mann and Llewellyn were victimized because of their political allegiances or because of a potentially exaggerated fear of disorder, their martyrdom gave their cause great publicity. Including the other arrests of Hannington and Elias, historian Peter Kingsford reflected that the trials aroused middle-class Labour sympathisers and the conflicts had 'contributed to a three day debate on unemployment and the Government had made a concession with meaning for many unemployed.'⁶³ It was just fifteen months till the next national hunger march, but this time the NUWM discarded their former communist slogan of 'Class against Class', and attempted to create a 'People's Front' in opposition to the rise of European fascism. Although the Labour Party and the Trade Unions ignored this call for unity, they successfully harnessed the support of the ILP. The Home Secretary claimed that it was because of the support of four MPs that the 1934 hunger march differed from the previous one. This is reflected in subsequent policing of the 1934 and 1936 hunger Marches as they were stated to have acted with 'more restraint'.⁶⁴ Even Lord Trenchard commented in 1936 that the 'meetings were in every case orderly and the conduct of the unemployed marchers beyond reproach.'⁶⁵

It was against this backdrop of violent clashes between hunger marchers and the police, the selective application of the Highway Act 1835, and the ambiguous interpretations of the common law authority of *Beatty* and *Wise*, that members of the

⁶² Street, *Freedom*, p. 46. Lansbury was required to enter into a personal recognizance of £1,000 and to find two sureties of £500 each.

⁶³ Kingsford, *The Hunger Marchers*, pp. 163-4.

⁶⁴ N. Branson, *The History of the Communist Party of Great Britain 1927-1941*, Lawrence and Wishart (1985), p. 81.

⁶⁵ Cmd. 5457, *Report of the Commissioner of Police of the Metropolis for the Year 1936*, p. 25

BUF donned their Blackshirts and began a propaganda campaign marching in the streets of towns and cities across Britain.

6) The Marching Blackshirts

As a newly formed political movement in 1932, Sir Oswald Mosley's BUF aspired to convey the new radical doctrine of fascism to the people of Great Britain via various propaganda techniques. During their public processions, members paraded in tight formation wearing the Blackshirt uniform which gave the appearance of a military styled march. The displaying of banners and the inclusion of a musical band were also incorporated in some BUF processions. The importance of effective propaganda methods to the contemporary democratic system was highlighted by jurist Ivor Jennings in 1937. With a newly franchised electorate, Jennings declared that Burke's doctrine of representative government was no longer adequate and that publicity was essential to true democracy. Nonetheless, he continued to state that, as the press and newsreel companies were essentially partial, old forms of political propaganda such as the public street corner meeting, which was instrumental in the rise of socialism, held a cardinal position in democratic government. Moreover, the techniques of publicising such meetings to ensure the largest audience were also imperative.⁶⁶ In a similar practice to the Salvation Army, the BUF processions were a particularly effective technique of gathering an audience and gaining the movement extensive publicity, yet the military character and appearance of the Blackshirts caused concern over the legality of their processions.

Although the precedent set by *Beatty v Gillbanks* may have reinforced the liberty of the fascists to organise processions in public places, the judgment of *Wise v*

⁶⁶ W. I. Jennings, 'Public Order' *The Political Quarterly in the Thirties*, 42:5(1971) 175-186, pp. 180-182. Originally published as, W. I. Jennings, 'Public Order' *The Political Quarterly*, 8:1(1937) 7-20.

Dunning added a further dimension to powers relating to the preservation of the peace. The Blackshirt processions frequently attracted hostile opposition, but it is necessary to question whether or not the resulting disorder was the 'natural consequence' of the BUF's actions. At common law, this consideration would ultimately determine if the judgment of *Beatty* or *Wise* should be adopted and whether the BUF should be permitted the liberty to organise public processions.

As members of the BUF were under strict orders to stay within the law and obey the police, the disorder that resulted from their processions was usually instigated by their political opponents, drawing a similarity with the Salvation Army marches and *Beatty v Gillbanks*. Conversely, when considering the Blackshirts' reputation for violence and brutality, their praise and emulation of European fascist regimes, their aggressive anti-communist policy, and the adoption of an open anti-Semitic policy from late 1934, the level of confrontational opposition to them must be measured in the context of *Wise v Dunning*. Therefore, it must be considered whether the disorder at BUF processions was the natural consequence of the provocation presented by the fascists or not.

An early example of a large Blackshirt procession occurred in July 1933, when 1,000 members of the BUF, including over 100 female fascists, marched through the West End of London. The procession, which was headed by a band and a standard bearer carrying the Union Jack, was for recruitment purposes and was witnessed by thousands of people. It was reported that a detachment of police accompanied the procession and there was no interference or obstruction. Mosley declared that the march would be followed by others in all the great cities of England.⁶⁷ An adequate police presence at such events was a necessary public order measure, yet the duty

⁶⁷ *The Times*, 18 Jul 1933, p. 21.

of the police to preserve order at fascist activities, which would involve protecting fascists from attack or interference, could ultimately be perceived or criticised as pro-fascist policing, rather than preserving public order.

6.1) The 'Battle of Stockton' in 1933

In September 1933, the BUF had organised a procession at Stockton-on-Tees which was preceded by an outdoor BUF meeting that had attracted hostile opposition. Blackshirt stewards had attempted to remove some hecklers which resulted in a brawl. Their actions had incensed the audience, and during the evening the crowd grew to consist of approximately 3,000 people. The hecklers were reported to be mainly communists and members of the NUWM. Order was briefly restored by seven police officers, but as the situation remained unstable, the police requested that the speaker, Captain Collier, close the meeting. Collier reflected the fascist leaderships' attitudes in adhering to police instruction and closed the meeting. This view was subsequently reproduced in an interview with the *Northern Echo* as he stated that, 'the Fascists were determined to obey law and order and help the police as much as possible.'⁶⁸

During the 70-80 man procession back to BUF headquarters, escorted by the police who had cleared a way through the crowd, several Blackshirts broke ranks and attacked those who had been hostile. The crowd retaliated and Blackshirts were chased in different directions, several melees ensued within a space of 300 yards. The report of the Chief Constable of the Durham County Constabulary declared that, 'The Fascists appeared to be keen on fighting and we had to give them a sharp reminder to get moving and get away out of the town before any further damage was

⁶⁸ *The Northern Echo*, 11 Sept 1933.

done.⁶⁹ The police then proceeded to escort them away from the hostile crowd, which had completely blocked all traffic, taking them to Thornbury and arranging for their buses to pick them up from there. The police report does not describe the extent of the violence in detail, except to say that one fascist was 'slightly injured about the head' and received hospital treatment and other injuries reported from the crowd were bruises to the face consistent with being struck by bare fists. The press reports were more theatrical. The *Northern Echo* described how several of the Blackshirts carried one of their wounded during their procession and suggested that more disorder would have resulted if they wanted to 'retaliate in sympathy with the injured man'.⁷⁰ Other details also emerged through the press, which detailed how the Blackshirts were spat at, attacked with staves, sticks and pick axe handles, and bombarded by bricks and potatoes studded with razor blades. One of the injured Blackshirts, Edmund Warburton, was also said to have lost the sight in one eye after being struck by a rock.⁷¹ The recording of the events at Stockton-on-Tees dramatically change between the police reports and the local press coverage. The police were naturally keen to demonstrate that they competently and successfully handled a difficult situation, while the press were keen to sell papers and sensationalise the events. While the reality may lie somewhere in the middle of these accounts, local contemporary accounts of the 'Battle of Stockton' ardently subscribe to the more violent version in order to demonstrate the local residents' rejection of fascism and the event itself is remembered as a precursor to the more famous Battle of Cable Street.⁷²

⁶⁹ TNA HO144/19070 Durham County Constabulary Special Report.

⁷⁰ *The Northern Echo*, 11 Sept 1933.

⁷¹ BBC Radio 4, *Making History*, broadcast on 18 Nov 2011, *The Northern Echo*, 17 Oct 2011.

⁷² *Ibid.*

Nevertheless, despite the skirmishes that undoubtedly occurred, the relatively few injuries that were recorded suggests that the Durham County Police had prevented serious disorder in difficult circumstances by closing the BUF meeting and escorting them out of the town. However, no arrests were made and the fascist retaliation towards their hecklers, as well as the violent actions of the anti-fascists, remained unpunished. The police report makes it clear that the fascists were accountable for the start of the disorder and emphasised that the BUF members were drawn from various neighbouring districts and counties. The discretion used by the leading officer reflected the greater need to restore order at the expense of making arrests. This decision to quickly escort the Blackshirts out of the town, rather than evoking the full extent of the law and apprehending those on either side that had committed a criminal offence, was further helped as there were initially only seven police officers on duty at the time who had to react to a crowd of 2,000-3,000 people who were hostile to the BUF.

6.2) The Debate on the use of the Unlawful Drilling Act 1819

In the House of Commons in May, 1933, Labour MP David Grenfell asked the Home Secretary, Sir John Gilmour, if he could share any information on organisations which were drilling adult males on semi-military lines. Gilmour refused to name any organisation stating that:

unauthorised meetings of persons for the purpose of being trained or of practising military exercises are prohibited by law and I have no reason to suppose that appropriate action under the provisions of the Unlawful Drilling Act, 1819, will not be taken should occasion arise.⁷³

⁷³ *HC Deb* 17 May 1933 vol 278 cc356-7.

Grenfell's question was a blatant allusion to the BUF's uniformed processions. In response, an article in the *Blackshirt* stated that the BUF were well aware of the 1819 Act and stated that, it was:

frequently impressed on all organisers the necessity of adhering to pure physical training, and of never in any sense stepping outside these limits... [adding] Demonstration marching, or practice in such marching, is in no way practising military exercises'.⁷⁴

The difficulty of mounting a prosecution under the Act was highlighted by Gilmour who stated that, 'It is difficult to say when physical exercises are really drilling or not. The law is directed against military training.'⁷⁵

In the spring of 1934, the question of the BUF's quasi-military appearance was deliberated by Sir John Gilmour. The necessity to deal with the issue was exposed following violence at a BUF meeting and procession in Bristol in April 1934. Gilmour stated that,

I think there is no doubt that this disorder was largely due to the adoption of semi-military evolutions by the Fascists, their marching in formation, and their general behaviour, which was regarded by the crowd as provocative.⁷⁶

Following the Home Secretary's comments on the disorder, Sir Oswald Mosley wrote to Gilmour asking him to clarify how the BUF were provocative. He continued to state that the only violence that he was aware of was when 'two negroes attempted to attack me and were knocked down by Fascists. One of these men carried and raised a knife in his hand.' Regarding Gilmour's accusation towards the military character of the BUF, Mosley declared that, 'To march in column of three is not a 'semi-military evolution,' and the right to march in procession is clearly permissible under the law of

⁷⁴ *The Blackshirt*, 16 June 1933, p. 2.

⁷⁵ *HC Deb* 17 May 1933 vol 278 cc357.

⁷⁶ *HC Deb* 09 April 1934 vol 288 c15.

this country.’⁷⁷ In Gilmour’s reply, he stated that such an attack with a knife on Mosley was not witnessed by any police officer but it was reported that one:

half-caste Communist... protested to the Fascists, as they marched away from the hall, against the way in which some of his associates had been treated at the meeting, but no assault or threat with a knife by him was observed by the police.

On Mosley’s explanation that marching in formation was necessary to protect individual known fascists from attack, Gilmour candidly suggested that ‘if members of the British Union of Fascists did not wear a uniform they would not be ‘well known to be Fascists’’⁷⁸

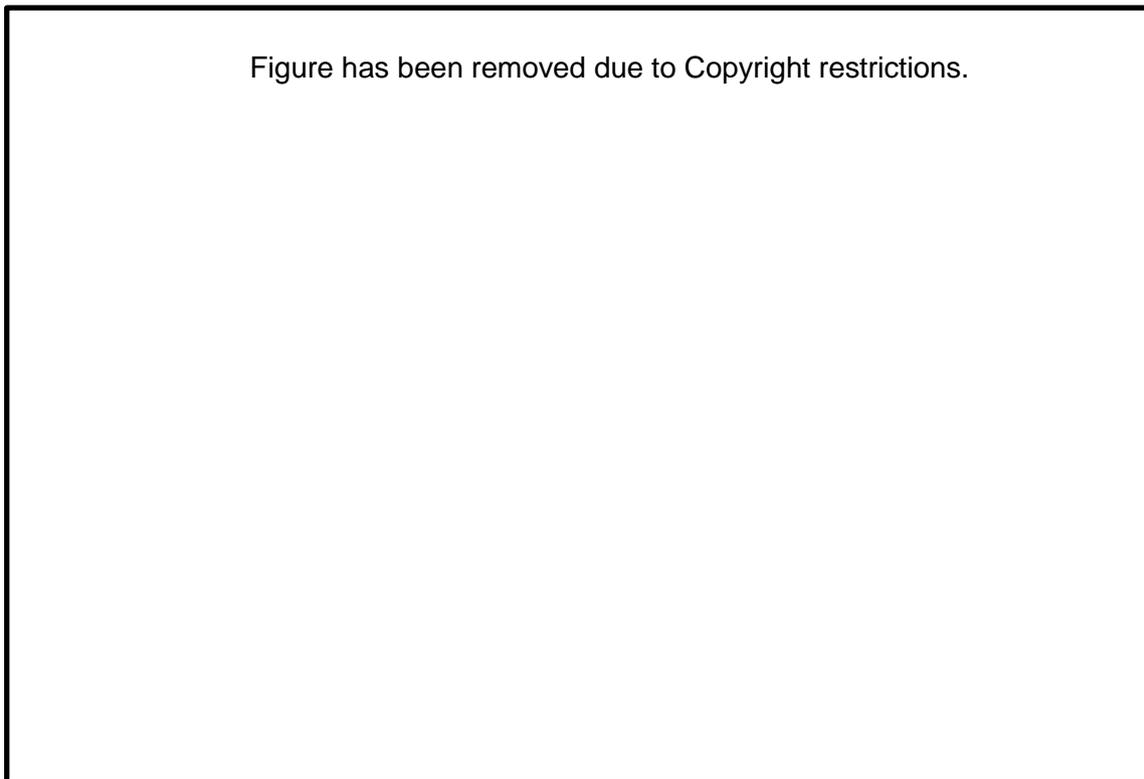


Figure 2.1 Showing an example of a uniformed BUF march being witnessed by the public.⁷⁹

Processions do offer greater physical protection for political activists as there is safety in numbers and such events usually have a large police presence. Their true

⁷⁷ *The Times*, 9 April 1934.

⁷⁸ *The Times*, 23 April 1934.

⁷⁹ *Action*, no 86, 1 Oct 1936.

value is the publicity and spectacle that they create (illustrated in figure 2.1). A uniformed march is even more effective, psychologically, on both the participant and the spectator. Jennings asserted that uniforms create a feeling of security to those that wear them, and feelings of insecurity in those who see them, claiming that both ingredients are necessary for the establishment of a dictatorship.⁸⁰

With no effective legal means to prohibit demonstrations, it became the duty of the police to maintain public order by regulating processions to prevent obstruction and preserve the peace. This was achieved by relying principally on s72 Highways Act 1835, s52 Metropolitan Police Act 1839 (or s21 Town Police Clauses Act 1847) and the breach of the peace doctrine. However, when utilizing breach of the peace powers, it is required to prove that disorder had been either actual or imminent as discussed in Chapter 1. Therefore, a large police presence at BUF meetings and processions became a necessary police tactic to preserve order considering the hostile and organised disruption their activities provoked. A major problem with this police tactic was the appearance that they were protecting the Blackshirts. This was reflected at the highest level by Trenchard who, in a letter to the Home Office, demonstrated his desire for 'doing away with the Fascists':

The large number of police which it has been found necessary to employ to keep the peace at Fascist demonstrations is creating the impression among anti-Fascists that Sir Oswald Mosley's semi-military organisation is being permitted to develop under police protection.⁸¹

6.3) The Blackshirts March to the Albert Hall, 1934

In 1934, a strong police presence was assembled when the BUF planned a public meeting at the Albert Hall. The meeting took place on 28 October, and police

⁸⁰ Jennings, 'Public Order', p. 177.

⁸¹ TNA, MEPO 3/2940

preparations included regulating the Blackshirt procession to the meeting. Police duties included stationing police officers inside the Albert Hall where an estimated 6,000 audience members were present, keeping order outside the Hall where between 300-600 anti-fascists staged a protest, and monitoring a meeting at Hyde Park, where the Co-ordinating Committee of Anti-Fascist Activities lectured to 1,200 audience members. The BUF march to the Albert Hall was estimated to have consisted of 1,200 Blackshirts.⁸² More than 1,000 police were on duty that evening, which included a detachment of two inspectors, five police sergeants, 100 police constables, one mounted inspector and ten mounted officers to accompany the Blackshirt procession. Other duties included the forming of cordons around the Albert Hall to exclude the passage of all but ticket holders, fascists and residents. The police on duty here included five inspectors, 12 police sergeants, 170 police constables, one mounted inspector and 10 mounted officers. The police operation was considered to have been sufficient in the Special Branch summary which stated that there were just three arrests, no serious disorder and advocated that police arrangements everywhere were adequate.⁸³

The police report for the BUF meeting at the Albert Hall on the 28 October revealed that the CPGB and other unnamed anti-fascist organisations disagreed with what methods should be employed to demonstrate their opposition. It stated:

Springhall, the London organiser, wished to employ force, some were in favour of a peaceful demonstration, whilst others considered that the Fascist movement was not making progress, and a counter demonstration would help the British Union of Fascists by giving more publicity to their aims.⁸⁴

⁸² TNA, MEPO 2/3077.

⁸³ TNA, MEPO 2/3077, 'Summary by C.I. for Superintendent (signature illegible)'.

⁸⁴ TNA, MEPO 2/3077, 45AA, p.2.

The combined anti-fascist organisations planned a meeting in Trafalgar Square to protest against the Incitement to Disaffection Bill⁸⁵ under the auspices of the NCCL, but further plans to march a poster parade past the Albert Hall, and for a meeting to be held at Alexandra Gate, Hyde Park, had to be abandoned. Lord Trenchard informed the organisers that the demonstration could not be held in that part of Hyde Park and that no procession could be permitted within a half a mile radius of the Albert Hall.⁸⁶ There is no mention in the report whether these instructions were issued by statutory provision or common law. Legislation that could be applied to processions of people, such as s52 Metropolitan Police Act 1839⁸⁷ may offer some validation for his orders, yet as the procession and meeting were restricted from taking place within a half a mile radius of the Albert Hall, and this provision is limited to preventing obstruction, such an action would be disproportionate. If the common law duty to prevent a breach of the peace was employed, Trenchard's strategy also seemed extreme, as such orders should only be applied when disorder was imminent. The Commissioner's authoritarian approach to managing public order also came under criticism from the NCCL when he prohibited all meetings or demonstration of unemployed persons from taking place near Labour Exchanges. When challenged by Kidd on what authority Trenchard issued these instructions, the Commissioner replied that he did not, 'regard it as part of his duty to discuss with the Council for Civil Liberties the propriety of the measure or its legal sanction.'⁸⁸

⁸⁵ Anti-fascist and Secretary of the NCCL, Ronald Kidd, later described the Act as, 'a most dangerous measure, for it includes provisions of so wide and general a character that under it almost any pacifist and anti-war activity can be proved to be an offence.' R. Kidd, *British Liberty in Danger*, (Lawrence and Wishart Ltd, 1940) p. 68.

⁸⁶ TNA MEPO 2/3077, 45AA, p.2.

⁸⁷ This provision enables the Commissioner to 'make regulations for the route to be observed by all carts, carriages, horses, and persons, and for preventing obstruction of the streets and thoroughfares within the metropolitan police district'.

⁸⁸ Ewing and Gearty, *The Struggle*, p. 257, citing TNA, HO 144/20149.

6.4) The Public Order Bill 1934

Throughout 1934 there was significant Blackshirt activity and widespread disorder across the country. The increasing rate of fascist-related disorder contributed towards the discussion of new legislation. In July 1934 the Home Secretary debated the existing public order law with the Chief Constables of England and Wales. In his resulting memorandum for the preservation of public order, Gilmour recorded that the Chief Constables were practically unanimous in their desire to see:

that the police should be given the power to prohibit processions which are likely to lead to a breach of the peace or to intimidate other persons, and to regulate the route of processions so as to prevent undue interference with traffic.⁸⁹

Although, under the Town Police Clauses Act 1847, this power was available to the magistrates and local authorities, the Chief Constables stressed that for public order to be kept effectively these functions should be held by the police. At this time the Home Office were already becoming aware that the standing joint committees and watch committees in some areas were becoming politically unreliable. It has been importantly stated by Chris Williams that during this period the rising influence of the Labour Party in local government had already 'led to an increase in political battles between police authorities and their chiefs.'⁹⁰ The interwar period was a critical time regarding the independence of the local police authorities and the Home Office's battle for centralisation. The period saw a change in definitions used by the Home Office which was highlighted by Permanent Secretary Sir John Anderson who stated in 1928 that 'the policeman is nobody's servant... He executes a public office under the Law'.⁹¹ Therefore, the Chief Constables request for local autonomy in regards to

⁸⁹ TNA HO 45/25386 'Memorandum by the Home Secretary' p. 4.

⁹⁰ Williams, 'Rotton Boroughs', p. 160-1.

⁹¹ Ibid.

regulating processions found favour from the Home Office and this was reflected in the drafting of the new Bill.

By October 1934, the Public Order Bill 1934⁹² was drafted but, as with the Processions (Regulations) Bill 1932, it did not reach Parliament. The discussion of the committee that drafted the proposed Bill does, however, reveal the steps that they were willing to take to maintain public order to the detriment of civil liberty. In addition to this, the Bill also neglected the local authorities and the provisions provided the Secretary of State and the Chief Constables with wide-reaching powers.

Clause 3 of the draft Bill proposed a wide increase in the powers of the Secretary of State, who would be able to prohibit processions or concentrations of people if he was satisfied that they may either lead to serious disorder or create abnormal demands on the poor law authorities. Such a prohibition would make the procession unlawful and those taking part would be guilty of an offence.⁹³ Interestingly, this clause replicated clause 1 of the failed Processions (Regulations) Bill 1932, and the proposed power lay solely with the Secretary of State and did not require a request from a Chief Constable. This marks a slight departure from the similar power held in Emergency Regulation 22, which placed the onus on chiefs of police to prohibit the processions with the approval of the Home Secretary. This departure is likely to reflect that these Bills were primarily mandated to prevent the Hunger Marches which would have traversed through different local authorities and provincial police forces. This would have given the Home Secretary comprehensive control over prohibiting these marches and declaring them as unlawful assemblies without relying

⁹² Long title, 'Draft of a Bill to Prohibit the maintenance of certain bodies of persons in connection with political organisations, to restrict and regulate processions, concentrations and public meetings and to facilitate the maintenance to order at meetings'.

⁹³ TNA MEPO 3/2940, Draft of a Bill... Clause 3.

on the action of individual local authorities, especially as some had previously shown political support for the hunger marchers.

The police were also to have their powers increased by legislation, rather than relying on the questionable use of common law powers or statutory powers relating to traffic obstruction. Clause 4(1) provided that, 'All processions shall follow such route as may be directed by or by authority of the chief officer of police.' This far-reaching power was supplemented by clause 4(2)(3) which provided the further power to impose restrictions on the time and destination of the procession as long as he is satisfied that such processions may either lead to serious disorder at a public meeting, or interference with the work of a government department or authority.⁹⁴

With a decline in fascist related public disorder, the urgency to introduce the Bill had diminished. In January 1935, the BUF had entered a period of reorganization that concentrated on the recruitment of ideologically committed members and constructing new electoral machinery.⁹⁵ In summarising BUF activity and membership in 1935, historian Stephen Dorril stated that the movement had, 'degenerated into an organisation increasingly dependent on a localized campaign playing on populist anti-Semitism.' Yet, by the end of the year Dorril estimated that paying membership had tripled to around 15,000.⁹⁶ By late 1935, organised opposition to the BUF had resurfaced, Blackshirt propaganda now included a provocative anti-Semitic doctrine, and in 1936 new legislative public order measures were again discussed by the Home Office.

7) The Resurgence of Disorder and the Battle of Cable Street

⁹⁴ Ibid. Clause 4.

⁹⁵ Lewis, *Illusions of Grandeur*, p. 67.

⁹⁶ Dorril, *Blackshirt*, p. 368.

Opposition towards BUF marches became more prominent in 1936.⁹⁷ When the political violence resurfaced the Liberal MP, Sir John Simon, was now Home Secretary and former Air Vice Marshall of the Royal Air Force, Sir Philip Game, the Metropolitan Police Commissioner.

Mosley's fascist campaign now exploited nationalist ideology with anti-Semitism and had gathered momentum in East London. During October 1936, the resources of the authorities were severely tested regarding three high profile processions. The first was the BUF's fourth anniversary march in East London, which met large scale anti-fascist resistance causing widespread violence and disorder, resulting in the Battle of Cable Street. Secondly, there was the NUWM's hunger march which consisted of unemployed workers from Scotland, Northumberland, Durham, Lancashire, Yorkshire, Nottinghamshire, Derby, Coventry and South Wales. The third march was of 200 unemployed men from Jarrow, which had suffered abnormally high unemployment following the closure of the shipyard the previous year. With the exception of the Jarrow Crusade, which was organised by the Jarrow Council, the relationship to political extremism by the former marches led to considerable debate by the authorities in how to manage the expected disorder.⁹⁸

The first contingents of the 1936 hunger march commenced from Scotland on 5 October, and were expected to assemble with the other marches in London on 8 November. A memorandum from the Home Secretary to the Cabinet revealed that the march was organised by the Communist Party and the NUWM, who unsuccessfully attempted to procure sponsorship for the march from the Labour Party and the Trades Union Congress, but managed to secure support from local

⁹⁷ TNA, MEPO 3/2940.

⁹⁸ TNA, CAB 24/264.

Trades Councils. Simon declared that the organisers were keen to hide the fact that the march was organised by the NUWM and the Communist Party as they did not want a 'communist' label attached to it. The memorandum demonstrated that although there was no legal method of prohibiting the march, every effort was made to hinder and discredit the organisers. Simon reiterated some of the arguments used following the national hunger marches of 1932 and 1934. In particular, this included attempting to alienate public sympathy by using the National Publicity Bureau to discredit the march. He wanted to demonstrate that the unemployed were being exploited by the communist organisers because the march could not have any constitutional influence on Government policy. Simon stated, 'It is the settled practice that Ministers of the Crown should refuse to receive deputations from such demonstrations.'⁹⁹

The BUF also faced obstacles in organising their own brand of political activism. Their application for a public procession in Manchester on 19 July 1936 was initially and controversially declined by the Manchester Watch Committee under s213 Manchester Police Act due to the provocative nature of the Blackshirt uniform. The BUF then tested the reason for the prohibition of their procession by responding that they would march without their uniform, an unusual incident which is discussed in more detail in Chapter 5. A similar condition was considered by the Hull Chief Constable and Watch Committee when the Blackshirts organised a procession there.¹⁰⁰ These examples demonstrate that different local authorities were prepared to take steps to limit the disorder caused by fascist processions. The uniform ban attempted to remove a proportion of the provocation associated with BUF processions. While some regions attempted to limit such provocation, the

⁹⁹ Ibid.

¹⁰⁰ *HC Deb* 31 July 1936 vol 315 cc1856-7.

Metropolitan Police made little effort to regulate their fourth anniversary march through prominent Jewish communities.

On 4 October 1936 the BUF planned a large rally in East London. It was scheduled to commence at Royal Mint Street where the Blackshirts were to assemble and be inspected by Mosley. They then planned to march through East London and divide into four different marching columns, which would each advance to separate open air meetings located at Shoreditch, Limehouse, Bow and Bethnal Green. Mosley intended to speak at each meeting. The anxiety and insecurity generated in East London before the Blackshirt rally was highlighted in the national press. The tabloid newspaper the *Daily Mirror* ran headlines such as, 'Fascist march plans make Jewish Quarter uneasy'¹⁰¹ and 'Thousands in terror of great fascist march in East End of London'.¹⁰²

Various forms of action were taken by the affected communities regarding the proposed march. The Mayors of Bethnal Green, Hackney, Poplar, Shoreditch and Stepney were received by a Home Office official who referred their request to prohibit the march to the Home Secretary. Mrs Roberts, the Mayor of Stepney, who had previously sent a request to the Home Secretary to ban the march, argued, 'I think the march is extremely provocative'.¹⁰³ George Lansbury, Labour MP for Bow and Bromley, wrote, asking him to divert the march. In a statement to the press, Lansbury stated, 'What I want is to maintain peace and order and I advise those people who are opposed to Fascism to keep away from the demonstration.'¹⁰⁴ The Jewish Peoples Council submitted a petition to the Home Secretary, which

¹⁰¹ *The Daily Mirror*, 1 Oct 1936.

¹⁰² *The Daily Mirror*, 3 Oct 1936.

¹⁰³ *The Daily Mirror*, 1 Oct 1936.

¹⁰⁴ *The Times*, 1 Oct 1936.

reportedly contained over 100,000 signatures, in an attempt to prohibit the march because of the fear that it would lead to violence. A member of the deputation, headed by the Labour MP James Hall, argued that, 'racial incitement and propaganda are likely to cause great disturbance.'¹⁰⁵

When considering the BUF's motives and actions during this period, whose anti-Semitic propaganda included a policy for the deportation of Jews who do not put 'Britain first',¹⁰⁶ the legal protection for lawful public assemblies that was attained at common law through *Beatty v Gillbanks* loses its relevance. Taking into account the level of provocation directed by the BUF at the Jewish communities in the East End, the judgment of *Wise v Dunning* must be applied. In that case Lord Alverstone CJ, referred to the 'essential condition... that there must be an act of the defendant, the natural consequence of which, if his act be not unlawful in itself, would be to produce an unlawful act by other persons.'¹⁰⁷ Although the Blackshirt march through Jewish communities was not unlawful in itself, a strong argument can be made that the 'natural consequence' of such an act of provocation would result in a breach of the peace. Attention should also be paid to s52 Metropolitan Police Act 1839 which provided the police with the power to regulate the route of processions when occasion required for keeping order and preventing obstruction. Regardless of these legal powers, Sir John Simon informed the deputation that he could not intervene.¹⁰⁸ In addition to the uncertainty on the lawful use of such powers, Simon also believed in upholding the tradition of free speech which he described as 'a grand characteristic of British political life... [which] involves a willingness to let others

¹⁰⁵ *The Daily Mirror*, 3 Oct 1936.

¹⁰⁶ O. Mosley, *Fascism: 100 Questions Asked and Answered*, BUF Publications (1936).

¹⁰⁷ *Wise v Dunning* [1902] 1 KB 175-76.

¹⁰⁸ Kidd, *British Liberty*, p. 69.

express opinions which we abominate.’¹⁰⁹ Ewing and Gearty dismissed the proposition that any inaction by the Government during the era of the BUF could represent their commitment to political liberty as they had also passed the Incitement to Disaffection Act 1934 which created strict limitations on political freedom. However, this statute related to subversion in the armed forces and addressed a perceived threat to national security which can be greatly contrasted with the public order problems created by the BUF.¹¹⁰

Ronald Kidd, of the NCCL, rejected Simon’s claim that he could not intervene with the Blackshirt procession. He declared that the 1839 Act had been utilised to prohibit a Labour march down Oxford Street in the autumn of that year. In addition, on 22 March the Commissioner regulated an anti-fascist procession by ordering that it would not be allowed within a half mile radius of the BUF meeting at the Albert Hall. His deduction was that:

A word from Sir John Simon to the Commissioner of Police, therefore, would have been sufficient to cause Sir Philip Game to exercise his powers under the Metropolitan Police Act and forbid the Fascist procession to march through the Jewish quarter.¹¹¹

The inaction of the authorities was starkly contrasted by the anti-fascist response which mobilised to prevent the Blackshirt march. Communist Phil Piratin recalled the arrangements that they made at the 1991 Witness Seminar on the Battle of Cable Street.¹¹² As the route of the march was not published they created contingency plans and used cyclists and motorcyclists to relay information regarding any fascist

¹⁰⁹ J. Simon, *Retrospect: The Memoir of the Rt. Hon. Viscount Simon*, Hutchinson and Co Ltd (1952), p. 215.

¹¹⁰ Thurlow highlighted that Major General Sir Vernon Kell of MI5 argued that the measures under the Incitement to disaffection Act were necessary to promote vigilance as ‘discontent in the forces of Hungary, Finland and Russia had played a key role in revolutionary activity in those countries.’ See, Thurlow, *The Secret State*, p. 142.

¹¹¹ Ibid.

¹¹² Piratin was later to become the last Communist MP and served the Mile End constituency from 1945-50.

movement. Additionally, at the sites where Mosley planned to speak, such as Victoria Park Square, two members of the Communist Party occupied the site from five in the morning until the night. Piratin stated that, 'they kept on speaking and reading books out a bit with two police standing by their side as evidence that they were there all the time.'¹¹³ Therefore, if Mosley's procession had been successful, he would not be able to hold a meeting as the Communist meeting would have already been in progress. It is interesting to note that Piratin recalled that two policeman were present to evidence that the Communist meeting had occupied the site first. He also spoke favourably of a police inspector who was 'more or less amiable to us at that time' who gave them information on the day regarding Mosley's preferred route.¹¹⁴

The events that followed became known as the Battle of Cable Street, as widespread fighting broke out between anti-fascist groups who mobilised to prevent the BUF procession and the police who attempted to disperse them. Contemporary writer and journalist Frederic Mullally reported:

Never was a more formidable concentration of police seen in London. Six thousand constables, together with the whole of the mounted division, were posted between Tower Hill and Whitechapel, lining the streets or assembled in large groups at strategic points.¹¹⁵

Following the erection of barricades along the route by anti-fascists, several baton charges were made by the police to clear the way for the BUF. To prevent further disorder Sir Philip Game prohibited the Blackshirt march. The fascists were redirected along the Embankment, away from the East End and dispersed. Some Blackshirts regrouped in Trafalgar Square causing minor disorders. The Front page

¹¹³ Catterall, *Witness Seminar*, p. 115.

¹¹⁴ *Ibid.* p. 113.

¹¹⁵ F. Mullally, *Fascism Inside England*, Claud Morris Books Limited (1946) p. 73.

of the *Daily Mirror* recounted the previous day's disorder with the headline '84 arrests as thousands stampede in London Riots: Stones meet police batons: 268 injured'. It continued:

BATON CHARGES . . . RIOTING CROWDS . . . LORRIES OVERTURNED . . . PAVING STONES TORN UP . . . GIRLS AND MEN CRASHING THROUGH PLATE GLASS WINDOWS . . . DEMONSTRATORS WIELDING TRUNCHEONS BOUND IN BARBED WIRE . . . 5,000 FASCISTS MASSING TO PARADE HEMMED IN BY A CROWD OF 100,000, INCLUDING THOUSANDS OF ANGRY JEWS AND COMMUNISTS SHOUTING, "THE FASCISTS SHALL NOT PASS."¹¹⁶

Other incidents reported included lighted fireworks and marbles being thrown at the hooves of charging police horses. An illustrative example of the disorder caused by the anti-fascist road blocks can be seen in figure 2.2.



Figure 2.2 The Battle of Cable Street. Permission to reproduce this image has been granted by the Bishopsgate Institute

¹¹⁶ *The Daily Mirror*, 5 Oct 1936.

As well as contending that the Metropolitan Police Act could have been exercised to prevent the BUF procession on the 4 October 1936, Kidd also highlighted the preventative powers that could have been exercised when a breach of the peace was threatened. He questioned why Mosley was not brought before a magistrate 'to show cause why he should not be bound over to be of good behaviour and to keep the peace, when he was in fact threatening so serious a disturbance of the peace.'¹¹⁷ In comparison, Kidd argued that this was the action taken against Tom Mann, the nominal head of the hunger march in 1932, despite the situation being less critical than it was regarding the fascist march. Despite not agreeing with the action of preventive justice in principle, he questioned why the authorities did not show as much zeal against Right wing speakers who deliberately threatened the peace, as they did against Left wing speakers, such as Katherine Duncan,¹¹⁸ who did not threaten the peace in any way.¹¹⁹

Although Kidd's argument was used to demonstrate pro-fascist partiality, this simplistic comparison is not entirely applicable to the situation. The origin of the anticipated breach of the peace at the processions organised by Mann and Mosley reflect this. As described above, at NUWM processions, it was the conduct of the marchers themselves that caused the authorities concern, while at BUF processions disorder was likely to have been caused by their political opponents. Yet, while it must also be acknowledged that the Home Office did actively attempt to reduce support for, and participation in, NUWM activities the discussion above highlighted that organizers had actively encouraged marchers to engage in disorder with the police and, despite the criticism of the special constables, members of the march

¹¹⁷ Kidd, *Liberty*, p. 70.

¹¹⁸ See *Duncan v Jones* which is discussed in Chapter 3.

¹¹⁹ Kidd, *Liberty*, p. 70.

had engaged in violent disorder. Additionally, although the incidents were only four years apart, the binding over of NUWM organizers was a particular strategy used at the time which was tested in order to prevent or limit further disorder. As Mann and Llewellyn generated publicity from their imprisonment and became martyrs for their cause, the use of this tactic to control public processions was redundant by 1936.

The legal basis for any prosecution of Mosley ahead of the 4 October demonstration would have been highly contentious. For instance, what law was his proposed action breaking? Because of the potential that his proposed public assembly may be attacked did not in itself make it unlawful. Even if *Wise v Dunning* were to be applied and it was argued that the 'natural consequence' of his actions would be a breach of the peace, there would have been no evidence to suggest that Mosley would have encouraged his supporters to reciprocate as Wise had done. Furthermore, the authorities were more apprehensive about securing convictions along the lines of anti-Semitism, especially after the unsatisfactory outcome against Arnold Leese, head of the IFL.¹²⁰

Perhaps the most significant factor in no action being taken by the authorities to prevent the march was Game's under-estimation of how serious the disorder would be. He advised the Home Office that there would probably be 'the usual few arrests for minor disturbances but I do not anticipate any serious trouble'.¹²¹ Historian Janet Clark suggested that there may have been other motivating factors as Game had privately welcomed the 'showdown'. Game had written to a friend the day before the proposed fascist march stating, 'I expect there will be some fun and a few broken heads before the day is out. I shall be glad if it brings things to a head as I hope it

¹²⁰ This is discussed in the chapter 3.

¹²¹ J. Clark, *Striving to Preserve the Peace: The National Council for Civil Liberties, the Metropolitan Police and the Dynamics of Disorder in Inter-war Britain* (2008) Thesis (PhD) Open University, p. 196.

might lead to banning processions all over London'.¹²² Here the discretion shown by Game to try and facilitate the BUF procession demonstrates the ability of superior police officers to create situations on the ground in order to advocate wider objectives. He also declared that he was not in favour of binding over leaders of political groups as he did not want them to become martyrs to their cause if they were subsequently sent to prison.¹²³ The disorder in East London on 4 October 1936 may have been 'the straw that broke the camel's back',¹²⁴ but it was not entirely unexpected, and it became a convenient catalyst in which cross party support could be drawn upon to pass new legislation. For Sir Philip Game, this had expediently opened the door for his powers to be increased regarding the regulation and prohibition of public processions.

8) The Debate on Clause 3 Public Order Bill 1936

The legacy of the Battle of Cable Street was the hastily passed statute; the Public Order Act 1936. The Act itself should not be seen solely as a result of fascist disorder, as it also encompasses suggestions and provisions advocated from Emergency Powers Act 1920 Regulation 22, the Processions (Regulations) Bill 1932 and the Public Order Bill 1934 in response to communist activity and the NUWM. In introducing clause 3, Simon opposed the general prohibition of processions by stressing their importance as 'an old and well-established method of exhibiting a point of view' although he did concede that they 'may not always be very

¹²² Ibid. p. 196, which cites A. Moore 'Sir Philip Game's "other life": the making of the 1936 Public Order Act in Britain', *Australian Journal of Politics and History*, Vol. 36, No. 1, 1990, 62-72, (p. 67).

¹²³ Ibid. p. 197, citing MEPO 3/551, Letter from Sir Philip Game to the Secretary of State dated 11 September 1936.

¹²⁴ Thurlow, 'The Straw', p.74-94.

effective'.¹²⁵ The necessity for local authorities to be able to regulate the route of processions was clearly explained by Simon:

At present the power is to be found in some rather ancient Statutes. In the case of the Metropolis it is in an Act of 1839; in the Provinces it is in an Act of 1847. The Statutes are in somewhat archaic words. They were passed before the full establishment of modern police forces. They are applied with some little difficulty. It does seem to me that it is much better to put into this Bill a plain provision on the subject.¹²⁶

As enacted s3(1) provided the chief of police with greater powers to control or regulate public processions. These included the power to prescribe the route of the procession or prohibit it from entering a specified public place. Under s3(2) the chief of police may apply to the council of the borough or district for an order to prohibit all public processions or a of any class of public procession for a period not exceeding three months, and following the consent of the Home Secretary, the order may be made. A similar provision under s3(3) provided the Metropolitan Police Commissioner the power to prohibit public processions with the consent of the Home Secretary, bypassing the need to apply to any local Council. The power to prohibit processions could only be imposed if there were reasonable grounds for apprehending that a procession may occasion serious public disorder and the powers under s3(1) were not sufficient in preventing the anticipated disorder.

These powers provided wide discretion for the authorities to restrict political activism and public protest. They echoed Emergency Regulation 22 which also provided chiefs of police with the power to prohibit processions with the consent of the Home Secretary if they anticipated disorder. Yet, this power became more extensive as Regulation 22 could only be used when a state of emergency had been declared under the Emergency Powers Act 1920. As mentioned above, the general Labour

¹²⁵ *HC Deb* 16 November 1936 vol 317 c1359.

¹²⁶ *Ibid.*

antipathy to the use of this power was demonstrated in 1926 during the General Strike. Yet, ten years on, the Public Order Bill was supported by the Labour Party, although they would still seek some amendments. This change was in part due to the Labour Party's commitment to opposing fascism. Historian Matthew Worley affirmed that Labour had maintained its stance in opposing fascism by advocating reasoned argument and constitutional procedure rather than participate in the anti-fascist activism which was largely organised by the far-Left. By the 1930s Labour's political arena had been established inside Parliament and city hall, in contrast to the street politics of the BUF.¹²⁷ In part, this contributed to Labour's reluctant support of the Bill in order to control the violence associated with the BUF's street politics. The apprehension was that in doing so the liberty of other groups, including those on the Left, would be restricted in the process.

The statutory powers provided to Chief Constables under s3 were the most controversial of the Act. Even the powers under s3(1) had significantly increased the power of Chief Constables, leading Morgan to reflect that their 'actions in controlling and routing processions were now, in effect, subject to no extra-judicial control either through local authorities or police authorities or through parliament itself.'¹²⁸

The provisions under s3 which gave the authorities the formal power to ban processions in advance remarkably 'survived Parliamentary scrutiny with no substantive modifications.'¹²⁹

Despite this, there were still forceful objections recorded in the House of Commons.

Labour MP Mr Buchanan challenged clause 3 stating:

¹²⁷ M. Worley, *Labour Inside the Gate: A History of the British Labour Party between the Wars*, I B Tauris (2005), p. 204.

¹²⁸ Morgan, *Conflict and Order*, pp. 273-4.

¹²⁹ Ewing and Gearty, *The Struggle*, p. 316.

The Bill was meant to deal with that problem of the Fascist movement and the shocking ill-treatment of the Jews, but this Bill gives the Home Secretary far wider powers, powers to deal with trade disputes and innocent demonstrations and agitations, and I fear that it will put the population of this country in a worse position than they were in before... [as the Bill] may well be used, not against the Fascist movement, but against the legitimate aspirations of very poor people.¹³⁰

These concerns on the restrictions of civil liberties were prevalent in the debate. Labour MP for Jarrow, Miss Ellen Wilkinson, made reference to the Chief Constable of York who hindered the hunger marchers' procession through the town and prevented them from receiving their provisions. She declared that this clause would 'legalise the present position of these bullying police constables' and criticised the proposed safeguard that the Chief Constable would need his case sanctioned by the local council as inadequate in certain areas: 'the difficulty will arise when there is a Chief Constable and a Council of the same political colour, as happens a very great deal in the Northern districts. In such cases there is [n]o safeguard.'¹³¹ Independent Labour Party (ILP) member, George Buchanan, agreed and stated that Chief Constables should not become involved in making political or religious decisions.

Communist MP, William Gallacher made the most outspoken attack stating, 'this is one of the most dangerous attacks on democracy that has ever been made in this country'.¹³² He reminded the House that the Labour Party had developed with the use of demonstrations and processions, and that the Liberals were also responsible for very wild and turbulent demonstrations of their own. He expressed his astonishment that other members could consider 'such an attack on the democratic rights of the people in such an easy manner... [we should never] make concessions

¹³⁰ *HC Deb* 26 Nov 1936 vol 318 c602.

¹³¹ *Ibid.* c596.

¹³² *Ibid.* c603.

that mean the sacrifice of democratic rights.¹³³ However, not all members from the Left disagreed. Labour MP, Herbert Morrison, declared that clause 3 was necessary, as clauses 1 and 2 would not prevent the mobilisation of fascist groups entering the East End and causing disruption and provocation, or the organisation of another crowd with the purpose of rioting with them.¹³⁴

During a discussion on clause 1, which dealt with the prohibition of uniforms, Captain Ramsey proposed an amendment that would also prohibit the carrying of a 'flag or banner bearing a provocative device or inscription'. Relating this proposal to processions he described a scenario where Orangemen might march through a Roman Catholic Borough, or a Mohammedan procession could march through the Hindu quarter in India, and hoped that some words would be added 'to cover a provocative inscription or device carried in a public procession through the streets.'¹³⁵ With reference to the example of Orangemen marching into a purposely provocative area, Labour MP for Liverpool, Scotland,¹³⁶ David Logan proposed that there was no need for the amendment. With reference to his own constituency he stated, 'If people had not the common sense to know that they were hurting the feelings of people in a particular neighbourhood by doing that, they would be taught a lesson and would not go again.' He added to this scenario of self-policing, 'There would be no need for an Act of Parliament to teach them.'¹³⁷

Effectively, the powers offered Chief Constables with wide discretion that could restrict freedom of expression and assembly with very little safeguards. Furthermore, it inevitably entangles the Chief Constables with making decisions which affect

¹³³ Ibid. cc606-607.

¹³⁴ Ibid. c611.

¹³⁵ *HC Deb* 23 Nov 1936 vol 318 c66.

¹³⁶ This was a constituency in the Scotland Road area of Liverpool, England.

¹³⁷ *HC Deb* 23 Nov 1936 vol 318 c66.

political activism. While the political impartiality of the police may be a fine ideal, Jefferson has highlighted that it is an 'impossible mandate'.¹³⁸ In addition, Lustgarten stated that the 1970s and 1980s witnessed the growing politicisation of the police as they became involved in attempting to influence legislation and policy. This constitutional shift changes the role of the police from 'executors of parliamentary command' to the fundamentally politicised role of being significantly responsible for 'the content of the criminal law'.¹³⁹ The influence that the Metropolitan Police Commissioners and Chief Constables tried to exert in the 1930s over public order policy established above demonstrates that this politicisation was clearly present in the interwar period. The political convictions of a Chief Constable together with their police authority, therefore, had the ability to influence their discretion, consciously or unconsciously, and potentially affect the liberty of political activists.

9) The Application of s3 from 1937-1939

In practice the subsequent s3 Public Order Act 1936 obstructed both fascist and communist processions. In 1937 the BUF made an application to hold a procession on 4 July from Limehouse to Trafalgar Square, which would pass through the main Jewish quarter of the East End of London. The new Home Secretary, Sir Samuel Hoare, announced in the House of Commons that under s3(3), a complete prohibition on political processions would be in effect for six weeks in a particular area in the East End of London. This decision was made because Game was of the opinion that prescribing the route of the procession under s3(1) would not be enough to prevent serious public disorder. The BUF subsequently organised a procession from Kentish Town to Trafalgar Square which was outside of the prohibited area.

¹³⁸ Jefferson, *The Case Against Paramilitary Policing*, p. 47.

¹³⁹ Lustgarten, *The Governance of Police*, pp. 168-9.

Hoare emphasised that the prohibition only affected political processions, irrespective of party, and would not be applied to other organisations such as the Salvation Army or non-political trade disputes.¹⁴⁰

The BUF procession on 4 July 1937 passed without any serious disturbances. *The Times* estimated that 6,000 fascists had assembled for the march, but this number was 'dwarfed by the crowd which collected in the locality.'¹⁴¹ Order was maintained by the 2,383 police officers who were on duty in connection with the fascist demonstrations that day and 19 arrests were made.¹⁴² The majority of those arrests related to s5 Public Order Act offences for insulting words and behaviour. At the Clerkenwell Police Court, the language used by the anti-fascist protestors demonstrated their contempt towards the police and their duty to protect the BUF procession. Among the chants for which protestors were arrested and charged were, 'The police are as bad as Mosley,' and 'Down with the coppers; smash Mosley's body-guard'.¹⁴³

When the ban expired in August 1937, it was renewed for a further six weeks. In September, it was subsequently renewed for three months, the maximum duration under the Act. The three month ban on political marches in the specified area was continually renewed every three months until the proscription of the BUF in 1940 under Defence Regulation 18B.¹⁴⁴

An editorial in the *Times* defended the imposed prohibition of processions in the proscribed area stating that it 'only puts a restraint on the freedom of demonstration in an area where political licence has threatened to extinguish liberty. It is licence

¹⁴⁰ *HC Deb* 21 June 1937 vol 325 cc847-848.

¹⁴¹ *The Times*, 5 Jul 1937.

¹⁴² *HC Deb* 15 July 1937 vol 326 cc1455; *The Times*, 5 July 1937.

¹⁴³ *The Times*, 6 July 1937.

¹⁴⁴ Benewick, *Political Violence*, p. 250.

that is restrained in order that larger liberties may be preserved.¹⁴⁵ Hoare defended the action stating:

In those parts there is concentrated a large number of Jews whose memories of racial persecution make them particularly sensitive, and a Fascist procession in centres where these special conditions exist would, in the judgement of the Commissioner and of myself, inevitably have led to serious public disorder.¹⁴⁶

As the 'special conditions' were not applicable to other parts of London, Hoare was apprehensive to sanction s3(3) elsewhere. On 3 October 1937 the BUF organised their fifth anniversary procession in London. Following the renewal of the ban in East London, the new route was to take the BUF through Bermondsey and South London. A deputation to the Home Secretary, led by Labour MP Ben Smith, to prohibit the procession failed. Hoare stated that the extension of the prohibition to every area that had a 'strong feeling of opposition to a procession demonstrating some unpopular political creed would be contrary to the spirit of the Public Order Act, 1936.'¹⁴⁷

Hoare's approach to regulating BUF processions under the Public Order Act acknowledged the sensitivities of different communities in reference to fascist provocation. In recognising that 'special circumstances' existed in certain East End districts, Hoare's actions were in line with the *Wise v Dunning* judgment that an unlawful act may be the 'natural consequence' of a legal act in which the language or conduct was insulting or abusive.¹⁴⁸ By sanctioning BUF processions outside of the Jewish communities of the East End, Hoare's decision conceded that prohibiting them would amount to political discrimination. In that case, any attempt to disrupt a BUF procession where the 'special circumstances' did not exist would, therefore,

¹⁴⁵ *The Times*, 14 Sept 1937.

¹⁴⁶ *The Times*, 29 June 1937.

¹⁴⁷ *The Times*, 28 Sept 1937.

¹⁴⁸ *Wise v Dunning* [1902] 1 KB 167, 179-180.

align with *Beatty v Gillbanks*. The distinction between the two judgments is prevalent in Hoare's application of the Public Order Act. A BUF procession can be permitted in one area, but proscribed in another, because of the different circumstances in which a breach of the peace may be occasioned.

The BUF procession on 3 October 1937 was met with hostile political opposition and created widespread disorder. *The Times* dramatically claimed 'the scenes of disorder yesterday seem to have been quite as bad as those in the East End which induced Parliament to pass the Public Order Act.'¹⁴⁹ When disorder broke, the report stated that the police 'painfully shepherded [the procession] to the place appointed for the Fascist meeting amid a continuous series of clashes'.¹⁵⁰ Following the procession, Game capitalised on the disorder by recommending to the Home Secretary that the s3(3) ban should be applied to the whole Metropolitan Police District. He went further, advocating that new legislation should be considered that would make 'processions of all kinds in the streets illegal once and for all'.¹⁵¹ This pragmatic proposition which focused on police resources rather than the liberty of the subject remained in his Annual Report for 1937. He stated that the Public Order Act has had a positive effect on the conduct of political meetings and demonstrations but had not reduced their number. He recorded that out of the 11,804 meetings and processions that were policed in 1937, over 7,000 of these were either fascist or anti-fascist. The BUF marches on the 4 July and 3 October each required the deployment of 2,500 police officers. Game linked the number of police required to regulate processions with the

¹⁴⁹ *The Times*, 4 Oct 1937.

¹⁵⁰ *The Times*, 4 Oct 1937.

¹⁵¹ TNA CAB/24/271, 'Minute from Sir Philip Game to Sir Samuel Hoare', (5 Oct 1937)'.

general increase in crime for the year as an argument to forward the prohibition of all political processions in the Metropolitan Police District.¹⁵²

In September 1938, the BUF application to hold another anniversary procession was not authorised so they held a public meeting in Lime Grove, Hammersmith instead.¹⁵³ This widened the previous use of the s3(3) ban as the route of the proposed BUF procession did not enter the previously prescribed area. In order to preserve order, the Police Commissioner and the Home Secretary sanctioned the procession ban despite the previous use of s3(3) only being justified in areas where a 'special condition' existed; namely the large Jewish communities situated in the East End. This signalled that, despite Hoare's previous acknowledgement of the 'spirit of the Public Order Act',¹⁵⁴ the potential to widen its application and further restrict the liberty of groups to hold public processions existed. This decision was criticised in the BUF's newspaper *Action*, which in reference to the communist appeals to have the procession prohibited, noted:

The simple fact is that certain persons having openly threatened to break the law, a democratic chief of police prefers to penalise the law-abiding rather than arrest the known criminals... The agents of Moscow have now discovered that they can obtain what they want from Sir Philip simply by threatening criminal violence if it is not given to them.¹⁵⁵

Yet, the ban seemed to find favour among many of the residents which were regularly affected by the processions. The Conservative Under-Secretary of State for the Home Department, Geoffrey Lloyd, stated that he believed that the ban had general approval in East London, adding,

¹⁵² Cmd. 5761, 'Report of the Commissioner of Police of the Metropolis for the year 1937', pp. 12-13.

¹⁵³ *The Times*, 24 Sept 1938.

¹⁵⁴ *The Times*, 28 Sept 1937.

¹⁵⁵ *Action*, No. 137, 1 October 1938, p. 2.

I would cite only one opinion, that of Dr. Mallon, Warden of Toynbee Hall, who knows the conditions in the area as well as anybody. He says: I do know the factors here, and I say that the extension of the prohibition is both desirable and necessary.¹⁵⁶

The new powers available under the Public Order Act had effectively denied the BUF one of their most powerful propaganda tools in the years leading up to the Second World War. Despite this, some success was managed by virtue of their peace campaign which attracted an audience of over 20,000 at Earl's Court on 16 July 1939.¹⁵⁷ The last national hunger march was staged in 1936 although it was not the enactment of the Public Order Act that led to its demise. Kingsford argued that other factors drew the far-Left away from organising another great march on London. He stated that there were shifts in the patterns of unemployment, a lack of a unifying issue to campaign for, the energies of many members were focused on the Spanish civil war, and the movement was also forced to economise due to its ailing finances.¹⁵⁸ After war was declared on 3 September 1939, public processions and meetings were now subject to Regulation 39E under the Defence of the Realm Act 1914. In October 1939 the principle of whether this was necessary was questioned by Dingle Foot. The Liberal MP and barrister Frank Griffith, also questioned the necessity of Regulation 39E, following the passing of the Public Order Act. His concern was that the powers of the Secretary of State could be conferred to any mayor, justice of the peace or chief officer of police, in relation to banning processions and public meetings.¹⁵⁹ However, for the BUF the liberty to form a public procession was eclipsed by the interment without trial of many of its leading figures including Mosley in May 1940 under Defence Regulation 18B. Two months later, the BUF was declared a proscribed organisation.

¹⁵⁶ *HC Deb* 15 Dec 1937, vol 330 cc1284.

¹⁵⁷ See chapter 4.

¹⁵⁸ Kingsford, *Hunger Marchers*, pp. 223-6.

¹⁵⁹ *HC Deb*, 31 October 1939 vol 352 cc1835 and 1840-1.

10) Post-War Legacy of s3

In the years following the Second World War Mosley revived his political ambitions with Union Movement (UM). Although he never replicated the success of the BUF in terms of membership, the activities of UM still provoked its share of public disorder. Mosley continued his anti-Semitic politics which were also now merged with the promotion of a racially white Europe. During the initial stages of Mosley's new movement, the Metropolitan Police utilised different tactics in minimising the disorder. In response to UM's proposed march from Ridley Road to Tottenham, the Commissioner utilised his powers under s3(1) to reroute the march. He deliberately waited until the morning of the procession to inform the organisers so the new route could not be advertised. In addition, he also prohibited the use of banners and loud speaker vans to minimise the provocation. Despite this, there was still considerable disorder and it was reported that 35 arrests were made and 23 people were charged.¹⁶⁰ The Labour Home Secretary, James Chuter Ede, declared that his role comprised of two public duties of equal importance. These were to maintain order and to preserve traditional liberties, and he showed regret that in attempting to balance the two, sometimes he had to suspend liberties that had previously been enjoyed.¹⁶¹ When Chuter Ede was questioned on the provocation caused by the procession, he responded:

The people who attended at the Home Office did regard the procession as a provocation, but I think that in this country we have to learn both to hear and to see things with which we do not agree, without feeling that we have been unduly provoked.¹⁶²

¹⁶⁰ *Dundee Courier*, 22 Mar 1949.

¹⁶¹ *HC Deb* 21 Mar 1949, vol 463 cc42.

¹⁶² *Ibid.*

He also intimated that he was of the opinion that if their opponents did not turn up and excite interest from passers-by, then UM would die a natural death as there had not been more than 150 present at any of their demonstrations.¹⁶³

On 11 September 1949, UM marched through North London and faced anti-fascist opposition at Dalston. There were stones and wood thrown at the procession, and one anti-fascist, James McLeod, broke through the police cordon and attempted to encourage others to do so and fight the members of UM shouting, 'Down with Fascism. Let's get at them. We fought six years against this and we must stop it now.' He was charged with using threatening behaviour. The magistrate reminded McLeod that the procession was perfectly legal, declaring, 'This is English law. It is not Jewish law or Communist law or Fascist Law.' Here, the magistrate reinforced the authority of the law, attempting to demonstrate that it does not recognise race or political creeds and applies equally to everyone. Despite this, in relation to McLeod's alleged remarks, the magistrate asked him what fighting he did in the war. Following the response of ground crew with the RAF, he stated, 'Do you call that fighting? You will go to prison for six weeks.'¹⁶⁴ However, he later demonstrated his discretion by calling McLeod back and altering his sentence to a £5 fine. Twelve people were charged in connection with the disturbance for offences which included carrying offensive weapons such as a knife and stones, obstruction of a police officer and assault.

Following the continuation of public disorder associated with Mosley's politics, it was not surprising that a month later, on 4 October 1949, UM's proposed march through the East End of London was proscribed. The date and location, being the

¹⁶³ Ibid. at cc43.

¹⁶⁴ *Evening Telegraph*, 12 Sept 1949.

anniversary of Cable Street, was provocative in itself. The Metropolitan Police Commissioner, Sir Harold Scott, requested a ban on all political processions for three months under s3(3) as he believed his powers under s3(1) were insufficient in preventing serious disorder. Upon this being granted by the Home Secretary, the UM response echoed BUF propaganda by claiming that the government had 'bowed to mob violence... [and deprived] the people of London their traditional rights of public demonstration.'¹⁶⁵

The use of the s3(3) banning order continued to be an effective weapon against the provocative public processions of the far-Right.¹⁶⁶ Yet, the definition of a public procession under this provision was still vague. Described by s9 Public Order Act 1936 as 'a procession in a public place', the question still remained on how a procession may be differentiated from a body of people walking to the same destination. On 15 October 1949, UM assistant secretary Alfred Flockhart, was charged with organising a public procession while the s3(3) ban was in effect. He had led some members from a newspaper sales drive in Knightsbridge to rendezvous with other officials at Hyde Park Corner. From there, the 150 members of UM walked to Piccadilly. It was reported that Flockhart gave signals directing the members following him and as they approached Piccadilly political slogans were shouted. Following a conviction at Bow Street Magistrates Court, Flockhart's appeal at the King's Bench Divisional Court centred on what constituted a procession. In *Flockhart v Robinson*,¹⁶⁷ Lord Goddard CJ placed the emphasis of a procession as being a 'body, of persons moving along a route'. This particularly wide definition was countered by Finmore J who found that the number of people who proceeded

¹⁶⁵ *Western Morning News*, 4 Oct 1949.

¹⁶⁶ Procession bans had also been implemented in April and May in 1948 to different London boroughs in response to UM activism.

¹⁶⁷ *Flockhart v Robinson* [1950] 2 KB 498.

along the same route in loose formation only became a public procession when their ranks closed up due to the traffic at Piccadilly as they then embodied an orderly formation. The magistrate's judgment was held and, as Flockhart had directed the procession, he was judged to have been the organiser. The judgment was held 2:1 and Finnemore J dissenting found that the procession had formed spontaneously and Flockhart could not be classed as the organiser because to organise 'meant something in the nature of planning or arranging.'¹⁶⁸

The position regarding the policing of public processions remained as laid down for half a century. However, before the enactment of the Public Order Act 1986,¹⁶⁹ the s3 power to ban any class of procession was significantly challenged in the Court of Appeal in 1981. Following serious disorder in Brixton, the Home Secretary sanctioned an application from the Metropolitan Police Commissioner to issue a blanket ban on all processions within the Metropolitan Police district, except those traditionally assembled on 1st May to celebrate May Day and those of a religious character customarily held. In *Kent v Metropolitan Police Commissioner*,¹⁷⁰ The General Secretary of the Campaign for Nuclear Disarmament (CND), Bruce Kent, a Roman Catholic priest, made an affidavit in support of the application to declare the ban null and void in order to entitle the CND to conduct a procession. Lord Denning MR affirmed the ban, but his judgment demonstrated the scope of such a wide power. The ban covered 786 square miles and prevented community based processions such as the charity carnival procession through the streets of Fulham which would have contained 80 floats on a three-mile route. Other processions that fell within the ban included 'a march of students to the House to protest about cuts:

¹⁶⁸ Ibid. at 499 and 505.

¹⁶⁹ The 1986 Act provided the police with further powers relating to public processions which is beyond the remit of this thesis.

¹⁷⁰ *Kent v Metropolitan Police Commissioner*, unreported, *The Times* 13 May 1981 (Court of Appeal).

and the marches of jobless people who wish to see their Member of Parliament to bring their claims to him.’¹⁷¹ As the Home Secretary refused to waive the ban to allow the Fulham carnival procession, Lord Denning judged that, ‘He must have thought that there was a reasonable fear that hooligans and others would attack the police and also perhaps the peaceful people taking part in that charity carnival.’ All three judges dismissed the appeal. Although Ackner LJ recognised that,

Blanket bans on all marches for however short a time are a serious restriction of a fundamental freedom, and the courts will always be vigilant to see that the power to impose such a ban has not been abused...

It is common knowledge that in the last five years since that judgment [*Hubbard v Pitt*¹⁷²] things have grown steadily worse. In this situation it is inevitable that to prevent bloodshed and loss of life there must be occasions when some of our rights and privileges have temporarily to be restricted. It would be gross irresponsibility if those who have the power to impose the restrictions did not exercise that power where there is good reason to anticipate the possibility of serious public disorder.¹⁷³

The overwhelming significance of *Kent v Metropolitan Police Commissioner* is that when serious disorder is reasonably anticipated, the police and the Home Secretary had the power to impose drastic measures at the cost of fundamental liberties, and it was supported by the courts. Since this judgment, the statutory law relating to public processions has also been largely increased by the Public Order Act 1986.

In addition, Lord Denning emulated Finnemore’s definition by referring to the dictionary definition of ‘procession’ as, ‘proceeding of body of persons... in orderly succession.’¹⁷⁴ This wide interpretation indicated that ‘any procession was likely to be covered by the definition.’ Yet, the phrase ‘body of persons’ indicates that a

¹⁷¹ Ibid.

¹⁷² *Hubbard v Pitt* [1976] QB 142. In this case Lord Denning promoted the right to demonstrate as long as ‘all is done peaceably and in good order, without threats or incitement to violence or obstruction to traffic’. While acknowledging that principle, Ackner LJ is highlighting that the current situation following the Brixton riot had meant that freedom to demonstrate needed to be curtailed in order to secure the safety of the community.

¹⁷³ *Kent v Metropolitan Police Commissioner*, unreported, *The Times* 13 May 1981 (Court of Appeal).

¹⁷⁴ Ibid.

procession must be more than one person. Lawyers John Marston and Paul Tain highlighted that although an individual may not constitute a procession, it may still create disorder if others gather to support or obstruct the person's passage and other provisions to prevent disorder would need to be invoked.¹⁷⁵ By definition it is possible that two people may form a procession.

11) Conclusion

Throughout this analysis of public processions it has been established that gradual shifts in the attitudes and practices of the Government and the police have occurred from the late nineteenth century to the mid twentieth century. In the centre of this period, the Public Order Act 1936 marked a significant shift in police procedure regarding public processions. Before this Act, police practice was inconsistent throughout the country due to the ambiguity and uncertainty of the legal powers they possessed. This was highlighted by William Harcourt's confusing and indecisive advice he gave to Chief Constables during the era of disorder associated with the Salvation Army. Also, several Metropolitan Police Commissioners including Horwood, Trenchard and Game asserted their influence on their respective Home Secretaries for an increase of powers relating to the preservation of order on the occasion of public processions. It has also been highlighted how Hunger Marchers and the BUF all experienced different levels of police interference across the provinces. This is potentially linked to the political influence of local watch committees and standing joint committees over their police forces. Yet, despite the potential that political partisanship had hindered both fascist and far-Left activism in different parts of the country, the differences in police tactics were largely only possible because of the wide discretion available to them. The Government's reluctance to act in both 1932

¹⁷⁵ J. Marston and P. Tain, *Public Order: The Criminal Law*, (2001), p.147.

and 1934 when Bills were drafted to regulate public processions demonstrated a tactful hesitation which saw the concerns over both the hunger marches and the Blackshirts fade without introducing oppressive new legislation, albeit only temporarily.

The enactment of the Public Order Act and the introduction of s3 indicates a significant shift in the Government's attitude regarding the individual liberty of the subject and the collective security of the community. This shift is demonstrated by the subsequent use of s3 to prohibit fascist processions and the substantial legal shift from the principle declared in *Beatty v Gillbanks*. Although the BUF's politics attracted and provoked widespread opposition, they were still a lawful political movement. On the occasion of their processions, members of the BUF were typically law-abiding and any violent disorder was, by and large, instigated by their opponents. The contrary interpretation to this argument would contend that the prime objective of the BUF was to insult local Jewish communities and incite racial hatred against them. Therefore, the BUF must take responsibility for any violent disorder associated with their political activities, deeming it as the 'natural consequence' of such deliberate provocation; therefore aligning it with *Wise v Dunning*. Yet, the provisions introduced in s3 Public Order Act 1936, made any application of previous common law judgments obsolete. The only prerequisite that a Chief Constable needed to impose regulations on public processions, or make an application to prohibit them in a particular area, was that they must have reasonable ground for apprehending that the procession may occasion serious public disorder. This chapter has demonstrated that since the continued disruption of BUF processions in London, which continued in the post-war era of UM, the power to proscribe them was increasingly utilised. The continual use of the s3 ban, which was initially applied in East London and then

across the Metropolitan Police District, demonstrated that far-Right activism was significantly falling from the safeguard of political liberty that they had previously enjoyed. The new legislation provided the authorities with a clearer legal provision which they could utilise against political activism that threatened the security of the community with very little fear of the order being legally challenged. Ewing and Gearty claimed that the government, by their inaction, tolerated BUF activism and disorder and only acted in 1936 in response to the 'weight of popular opposition to them and the message of Cable Street'.¹⁷⁶ While this may have been a factor that influenced the legislation, it neglects other elements that preceded the statutory response. For instance, successive commissioners and Chief Constables had advocated for an increase in powers relating to public processions in the wake of BUF disorder. Also, the legal astuteness of BUF activism had often impeded the use of preventive measures or restrictive responses, which contrasted with the activism of the far-Left who openly contested police and government authority.

While it was common for local councillors and Mayors to campaign against provocative far-Right activism, it was anti-fascist opposition on the streets which caused concern for the police in maintaining order. This dual anxiety contributed to the acceptance of the wide powers under this Act which also effected other political movements. However, as mentioned above, many Chief Constables had advocated for more powers to control or prohibit public processions prior to the Public Order Act, and Sir Philip Game went even further in his disliking of BUF processions by endorsing a prohibition on all processions. Moreover, when applications for a s3 ban on processions had been submitted to the Home Secretary they had been consistently sanctioned, and when challenged in the courts, as in *Kent*, they have

¹⁷⁶ Ewing and Gearty, *The Struggle*, p. 329.

been supported by the judiciary. This marks a significant shift, not only from the principles of *Beatty v Gilbanks*, but also to Sir Samuel Hoare's description of the 'spirit of the Public Order Act' which acknowledged the existence of special conditions that made proscription of far-Right activism necessary in some areas but not in others. In practice, the s3 ban was greatly expanded because of the anti-fascist activism that continued to hinder the BUF. Section 3, therefore, became a useful statutory provision that could prohibit a procession independent of whether the disorder was anticipated from the marchers or their opponents.

The legislative developments concerning public processions, initiated in the time of increasing conflict and disorder between the politically extreme movements of the interwar period, placed a heavy emphasis on the philosophy of preventative measures. Powers were made available to the police to impose conditions on processions to prevent disorder, and if these powers were not deemed as sufficient, the power to prohibit the procession was ultimately available. These provisions provided Chief Constables with wide discretionary powers over the liberty of political activists and protestors, as it was ultimately their opinion on the level of anticipated disorder which directed them to apply to the local council to request a sanction from the Home Secretary to proscribe all processions or any class of processions for a period up to three months. The powers that became available to restrict public processions under the Public Order Act are also closely linked to the freedoms of assembly and expression. These freedoms can also be manifested in the form of a public meeting. The next chapter will analyse the concept of freedom of speech and the legal restrictions placed upon it in relation to public meetings and the preservation of public order.

Chapter 3

The "Englishman's right of Free Speech"¹⁷⁷: Public Meetings in Public Places

[I]t is difficult for the present administration of the law to preserve even a pretence of impartiality.¹⁷⁸

1) Introduction

Many public meetings have resulted in considerable disorder in Britain. Before the era of the BUF, a combination of judicial law-making and Acts of Parliament had evolved, informing the provincial police constabularies how to regulate disorder, or the anticipation of disorder, at public meetings. This produced varying results across the country. There is a significant association between meetings and processions with regard to the law of public assembly and obstruction of the highways, which has been examined in Chapter 2. There is also an overlap within individual events, as public processions were commonly held directly before and after public meetings. Therefore, examination of police responses at public meetings will intermittently need to consider tactics applied during a procession, in order to contextualise a specific series of events. This chapter examines the policing of public meetings, and the traditionally held belief in the 'right' of freedom of speech.

Firstly, this chapter evaluates the legal definitions relating to public meetings and freedom of speech. Significant events that motivated legal developments at both statute and common law level prior to the 1930s are then examined. The use of police discretion in response to both fascist and communist speakers and the judicial

¹⁷⁷ *Action*, 24 Oct 1936, number 36, p. 9.

¹⁷⁸ MEPO 2/3116 Quote by Sir Oswald Mosley in letter to Home Secretary, 5 Aug 1937.

decisions that followed are analysed, as well as the contemporary notions of the 'right to free speech'. The Parliamentary debates during the reading of the Public Order Bill 1936 are assessed, and the subsequent implications to the policing of public meetings are then considered. Finally, the application of this Act in the post-war period, with reference to the continued use of anti-Semitism by the far-Right is then examined.

For Ewing and Gearty, the developments at common law during this period, such as *Thomas v Sawkins* and *Duncan v Jones*, provided the police with the power to select 'apparently on an *ad hoc* and entirely unprincipled basis' which meetings to permit and which to close, with the only requirement being based upon the suspicion of future behaviour.¹⁷⁹ While it cannot be denied that these judgments increased the power of the police in respect of public meetings, it is necessary to examine wider factors which may have led to the disproportionate arrest of the opponents of fascism rather than the fascists themselves. For instance, in an argument to support the notion of police partisanship, Ewing and Gearty state, 'A protest at an open-air fascist rally in Bristol led to nine arrests, all apparently of demonstrators rather than of fascists.'¹⁸⁰ There is no evidence provided to suggest that the fascists had engaged in any criminal activity, or that the anti-fascist protest was law-abiding and undeserving of such police action. Similarly, an example of disorder at Plymouth highlighted that two anti-fascists had been jailed for assaulting a police officer in the execution of their duty during the police's attempt to disperse an anti-fascist protest which involved a crowd of 1,000 demonstrators congregating outside the fascist headquarters.¹⁸¹ Again, Ewing and Gearty do not discuss the behaviour of the crowd.

¹⁷⁹ Ewing and Gearty, *The Struggle*, p. 328.

¹⁸⁰ *Ibid.* p. 287.

¹⁸¹ *Ibid.*

Therefore, these incidents can only serve as evidence of police action against anti-fascist activism which does not necessarily prove that any partiality was involved. Furthermore, additional examples of the Plymouth Police's action regarding fascist activism at Market Square in this chapter and at Plymouth Drill Hall during a meeting addressed by Mosley in chapter 4, demonstrates that there was no particular partiality towards the fascists on the part of the Plymouth police.

Assertions by historians Richard Thurlow and Gerald Anderson that the policing of political extremism during the interwar period was hindered by the problems of the interpretation of the law at street level and that the police frequently faced the challenge of keeping the extreme movements apart, provide a more balanced assessment of policing in this era, yet more in-depth historico-legal analysis is required to support this.¹⁸² This chapter, therefore, provides an analysis on the wide use of police discretion regarding public meetings and freedom of speech from the suppression of socialist activism at Trafalgar Square in the 1880s to the continued use of anti-Semitic propaganda by the far-Right in the 1940s and 1950s. This analysis will show that not all policing of fascist or anti-fascist activism can be accurately understood as demonstrating political partiality and the use of discretion in selecting when to take assertive action or not has many other pertinent factors.

2) Legal Definitions: Public Meetings and Freedom of Speech

In the interwar period no provision existed in the substantive criminal law to prohibit the forming of lawful public assemblies.¹⁸³ Furthermore, despite the various claims

¹⁸²¹⁸² Thurlow, *Fascism in Britain*, p. 84, and Anderson, *Fascists, Communists and the National Government*.

¹⁸³ This remained the case until s14 Public Order Act 1986 provided a statutory power to impose conditions on public assemblies which includes the power to stipulate where the assembly is held, the maximum duration of the assembly, and the maximum number of participants that constitute it. These conditions can be applied by the Chief Officer of Police to prevent disorder, damage, disruption or

made by public speakers in the nineteenth and twentieth centuries to the Englishman's 'right' to free speech, no legal protection of this notion existed in constitutional terms.¹⁸⁴ The fundamental duty of the police is to preserve the Queen's Peace and uphold the law. In respect of maintaining order at public meetings, the police held wide discretionary powers in order to keep the peace. Therefore, the policing of public meetings was necessarily based on individual factors, such as their existing intelligence on the speakers and the anticipated likelihood of disorder. Once these elements had been analysed, it would be utilised to inform police tactics, such as how many police officers were needed to be on duty and whether note takers were required. When public meetings were in progress the police were also faced with the dilemma of who should action be taken against in the anticipation of disorder; an aggressive or persistent heckler from the crowd, or from a provocative speaker who incited discontent and potential violence from the audience? The police subsequently had wide discretionary powers under the breach of the peace doctrine at their disposal in order to keep the peace. For criminologist Tony Jefferson, the wide discretion involved in regulating situations such as this necessarily meant that public order policing involved making subjective and, therefore, partial decisions which ultimately 'exposed a hidden politics of policing'.¹⁸⁵ Yet, it is not just the potential of political partiality that needs to be analysed in this context. David Waddington asserted that the very act of invoking legislation could potentially create further problems for the police, requiring the need for police tactics to be measured,

intimidation if they reasonably believe that the assembly may result in serious public disorder, serious damage to property or serious disruption to the life of the community.

¹⁸⁴ The right to form a public assembly was not legally protected in constitutional terms until the Human Rights Act 1998. Even following the HRA, and the adoption of the ECHR, the now protected rights to freedom of expression and freedom of assembly under Articles 10 and 11, are not absolute and are subject to the conditions placed in Articles 10(2) and 11(2).

¹⁸⁵ Jefferson, *The case against paramilitary policing*, p. 47

and the potential consequences of their actions to be calculated.¹⁸⁶ Peter Waddington added that ‘an arrest for a minor offence could spark off a riot in which damage and injury result and an inquiry that threatens careers.’¹⁸⁷ It is in these cases where the police officer has to utilize their discretion in deciding when it is appropriate to take assertive action. The resulting history is a continuous narrative of allegations towards the police of partisanship and brutality.

Like public processions, public meetings are also a form of public assembly and, therefore, subject to the same conditions that would consider such an assembly to be unlawful.¹⁸⁸ This includes statutory and common law offences, such as laws relating to obstruction of the highways,¹⁸⁹ sedition,¹⁹⁰ or the use of threatening, abusive, insulting words or behaviour.¹⁹¹ Other common law offences related to unlawful assembly were riot, rout and affray.¹⁹² The current legal definition for ‘public meeting’ is found in s9 Public Order Act 1936, which was not repealed by the 1986 Act. Firstly, a meeting is defined as ‘a meeting held for the purpose of the discussion of matters of public interest or for the purpose of the expression of views on such matters’. S9 subsequently defines public meeting as ‘any meeting in a public place

¹⁸⁶ D. Waddington, *Policing Public Order: Theory and Practice*, Willan Publishing (2007), p. 12

¹⁸⁷ P. A. J. Waddington, ‘Controlling protest in contemporary historical and comparative perspective’, in D. della Porta and H. Reiter (eds), *Policing Protest: the Control of Mass Demonstrations in Western Democracies*, University of Minnesota Press (1998), p. 120.

¹⁸⁸ See Chapter 2 for definition of public assembly.

¹⁸⁹ See s72 Highway Act 1835 and s28 Town Police Clauses Act 1847. The offence of wilful obstruction of the highway is now under s137 Highway Act 1980.

¹⁹⁰ Smith and Hogan stated, ‘There is probably no offence properly described as “sedition” in English law, but the oral or written publication of words with a seditious intention is a common law misdemeanour and an agreement to further a seditious intention by doing any act is a conspiracy.’ J. C. Smith and B. H. Hogan, *Criminal Law*, Third Edition, Butterworths (1973), p. 646. Seditious intention was described in *R v Burns* (1886) 16 Cox CC 355 as ‘An intention to excite ill-will between different classes of Her Majesty’s subjects may be a seditious intention; whether or not it is so in any particular case must be decided upon by the jury after taking into consideration all the circumstances of the case.’ See also the Incitement to Disaffection Act 1934 and the Incitement to Mutiny Act 1797.

¹⁹¹ See s54(13) Metropolitan Police Act 1839 and other local by-laws amended by s5 Public Order Act 1936 and now in force under ss4-5 Public Order Act 1986.

¹⁹² These are defined in the Introduction and, with the exception of rout, are now statutory offences under ss1-3 Public Order Act 1986.

and any meeting which the public or any section thereof are permitted to attend, whether on payment or otherwise’.

Before the HRA, English law provided no protection to the right of free speech. It only existed as an absolute ‘right’ and privilege in Parliament guaranteed by Article 9 of the Bill of Rights 1689, which gave MPs unconditional freedom of expression. Outside of Parliament, freedoms were protected by the common law through the concept of residual freedom, whereby people were free to say what they liked except where the substantive law made it unlawful. As with the claim to free assembly, under the notion of residual freedom, people were free to say what they pleased, but only to the extent that their words or behaviour did not violate any law. Before the Public Order Act 1936, legislation was in force in many parts of Britain restricting what language or behaviour could be deemed as unlawful. This included s54(13) Metropolitan Police Act 1839 which made it an offence to use ‘any threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned’. Outside the Metropolitan Police district, the situation was even more problematic as there were similar bye-laws and local Acts in different regions which had inconsistent penalties or procedures. These Acts also required the police to utilise their discretion to decide whether the nature of the words were ‘threatening, abusive or insulting’, and whether there was the likelihood of a breach of the peace occurring.

3) The Historic Claim to the ‘Right’ of Public Meeting

3.1) Public Meetings at Trafalgar Square 1886-88

In the mid-1880s, during a period of severe depression, large groups of unemployed men began to camp in Trafalgar Square. This congregation of disgruntled and

workless men became a receptive audience for radical political groups such as the Social Democratic Federation (SDF), whose meetings attracted the attention of the authorities. Richard Vogler described this period of suppression of public meetings as being 'the hallmark of careful and strategic planning [by the Home Office and the Metropolitan Police].'¹⁹³ His analysis highlighted the appointment of Sir Charles Warren, who had a military background, as Metropolitan Police Commissioner in 1886, and the Tory Home Secretary, Sir Henry Matthews, as being 'ready to deal with the SDF and the unemployed demonstrators.'¹⁹⁴ Vogler also emphasised the importance of the two magistrates selected to preside over cases brought against any person arrested in connection with the disorder at either Trafalgar Square or Hyde Park. They were 'almost the oldest serving Metropolitan Magistrates... and had a record of loyalty to the police.'¹⁹⁵

On 8 November 1887, Warren issued a public notice informing that until further intimation, 'no public meetings will be allowed to assemble in Trafalgar Square, nor will speeches be allowed to be delivered there.'¹⁹⁶ The police subsequently made several arrests of men who attempted to address a crowd. This included one man who was arrested for waving a red handkerchief. Also, the arrest of two journalists, including the well-known war correspondent Bennett Burleigh, who were charged at Bow Street Police Court for being, 'loose, idle, and disorderly persons, disturbing the public peace with intent to commit a felony' and 'obstructing and resisting the police while in the execution of their duty in Trafalgar Square' caused some controversy.¹⁹⁷ Burleigh refused to be bound over to be of good behaviour for six months with

¹⁹³ Vogler, *Reading the Riot Act*, p. 60.

¹⁹⁴ *Ibid.* p. 61.

¹⁹⁵ *Ibid.* p. 62.

¹⁹⁶ *Western Times*, 9 Nov 1887.

¹⁹⁷ *Western Times*, 9 Nov 1887.

sureties of £100, arguing that the magistrate Vaughn did not even listen to the defence. In response, Vaughn replied that he expected the defendant to ‘be “pleased” to get off in this way, and remanded him for a week.’¹⁹⁸ Burleigh was granted bail and was discharged a week later. Bodkin Poland, prosecuting, apologised to Burleigh on behalf of the Treasury for his arrest, stating that he had been arrested by mistake.¹⁹⁹ From his analysis, Vogler determined that that the Metropolitan Police were able to exercise independent authority over the magistracy and the military leading up to and including the Trafalgar Square Riot of 13 November 1887, which contrasted the experience of the provincial police force during the disorder at Featherstone in 1893. However, the legal and political discussions that arose in this period, as a result of Warren’s excessive tactics of suppressing the radical speakers in Trafalgar Square, were critical because they addressed the claim of a ‘right’ of public meeting.

Following Warren’s prohibition, the *Pall Mall Gazette* suggested that:

[S]omething must be done... to defend the legal liberties of the Londoner from the insolent usurpations of Scotland-yard... The right of public meeting is one of the most sacred rights which freemen possess. Together with trial by jury, it is the parent of all our liberties.²⁰⁰

Many contemporary newspapers referred to the ‘right’ of public meeting, despite no such legal right being encoded within UK constitutional law. People were at liberty to form a lawful assembly for the purpose of addressing a public meeting as no law had specifically stated that they could not. Despite the liberty to hold public meetings not being a constitutional right, the language utilised by newspapers, politicians and street lecturers demonstrate that there was a traditionally held belief in the ‘right’ of

¹⁹⁸ *Aberdeen Journal*, 12 Nov 1887.

¹⁹⁹ *Reading Mercury*, 19 Nov 1887.

²⁰⁰ *The Pall Mall Gazette*, 10 Nov 1887.

public meeting. Correspondingly, if the police prohibited a public assembly, their actions must also be legally justified; critics of Warren claim his actions were not. The *Pall Mall Gazette* continued, 'in Central London there is practically but one open space where the poor man can hold a public meeting... [But] that one open space is to be now closed against him – not by law, but the arbitrary edict of a policeman.'²⁰¹

Trafalgar Square was a popular place for public meetings in London as speakers could address large crowds without causing significant obstruction of the highway.

Following the Trafalgar Square riot of 13 November 1887, Cunninghame Graham, the socialist Liberal MP, and John Burns, who formed the Battersea branch of the SDF, 'were indicted for a riot, an unlawful assembly, and an assault upon William Blunden and John Martell, police-constables, in the execution of their duty.'²⁰² A crucial part of this case was whether or not Warren's proclamation had any legal authority. If the assembly formed by Graham and Burns was found to be lawful, then the proclamation issued by Warren would be void. In cross-examination by Asquith, Warren stated that he 'suppose[d]' he issued the proclamation under the common law. Counsel also referred to the Trafalgar Square Act 1844, which 'empowered the Commissioner of Works to make proper regulations for the use of the square', yet the proclamation was made by the Metropolitan Police Commissioner, and not the Commissioner of Works. It was also contended by the counsel that if Warren used his authority from s52 Metropolitan Police Act, 'that it was ultra vires, as the power given by this section was for making regulations for carriage routes and for the preventing obstruction in the streets... The proclamation went far beyond anything of

²⁰¹ Ibid.

²⁰² *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 7.0, 22 May 2012), January 1888, trial of ROBERT GALLINGAD BONTINE CUNNINGHAME GRAHAM JOHN BURNS (t18880109-223).

that kind, as it prohibited meetings and speeches.²⁰³ In advising the jury, Charles J, confirmed that while Warren's public notice did not necessarily make a meeting unlawful, he declared:

[T]he fact that Sir Charles considered a gathering there would be dangerous to the public peace justified his issue of the notices, and the constables did their duty in dispersing people who assembled there. But if the gathering there had been for a lawful object that would have been no justification for the riotous conduct of those who acted against the police.²⁰⁴

Warren's public notice prohibiting public meetings was only justified under the common law. This was a preventative action to avert a breach of the peace despite there being no imminence of disorder, and the defendants had a history of addressing numerous peaceable meetings. Regardless of this, the jury found them guilty of unlawful assembly, but not the more serious charges of riot, or for the assault upon the police offices. Charles J concurred with the verdict and sentenced Graham and Burns to six weeks imprisonment without hard labour.²⁰⁵

The legal authority of Warren's notice was also subject to the hearing of Mr W Saunders, who was charged with disorderly conduct for addressing a crowd in Trafalgar Square, at Bow Street Police Court on 17 November 1887. Mr Poland, prosecuting on behalf of the Treasury, stated that the Government withdrew the prosecution because there was 'no penalty attached to the disobedience of the proclamation.' The defence pressed for a conviction in order for the case to be carried into another court. Ingham J, discharged the defendant, stating that there was nothing he could do to forward his views.²⁰⁶

²⁰³ *The Times*, 19 Jan 1888.

²⁰⁴ *Ibid.*

²⁰⁵ *Ibid.*

²⁰⁶ *Reading Mercury*, 19 Nov 1887.

Edward Lewis, a solicitor who had previously defended many of the accused at Bow Street Police Court, directly attacked the prohibition of meetings held in Trafalgar Square by tendering information in support of his application for summonses against Warren and the Home Secretary, Sir Henry Matthews, 'for having used violence and intimidation with a view to prevent citizens from holding public meetings in Trafalgar Square, for a lawful purpose, without legal authority.' The magistrate, Vaughn declared that he could not grant the summonses stating:

It may be bad law, and if so, you can go to the high court and get the whole of it reviewed and my refusal to grant you summonses considered. If the court says that your judgement is correct, then, of course, I shall be compelled to grant you the summonses.²⁰⁷

This led to the hearing *Ex parte Lewis*.²⁰⁸ Two of Lewis's complaints were that Matthews and Warren had conspired:

by unlawful violence and other unlawful means to prevent divers of Her Majesty's subjects from exercising their constitutional and lawful rights... [and to] endanger the public safety and peace, and to injure, annoy, and disturb the public in the enjoyment of their civil rights.²⁰⁹

Lewis's claim to establish peaceful public assembly and protest at Trafalgar Square as a constitutional right through the common law failed. However, in his judgment, Wills J stated, 'a great deal was said about the right of public meeting – unnecessarily – inasmuch as it is a right which has long passed out of region of discussion or doubt.'²¹⁰ This ambiguous statement has potentially two very different interpretations. It is commonly seen as a judgment which recognises the 'right' to public meetings. In 2010, Peter Thornton QC referenced this quote when he argued that, 'The Law has long recognised the right of public meeting, 'a right which has

²⁰⁷ *Morning Post*, 16 Feb 1888.

²⁰⁸ *Ex parte Lewis* (1888) 21 QBD 191.

²⁰⁹ *Ibid* at 193.

²¹⁰ *Ibid* at 196.

long passed out of the region of discussion or doubt'.²¹¹ Yet, Wills J's summary is not consistent with this interpretation. It is more likely that when he stated that 'it is a right which has long passed out of region of discussion or doubt' he was merely summarising Lewis' argument, which is evidenced by the first clause of his sentence, 'a great deal was said about the right of public meeting'. Therefore, in its full context, Wills J's quote summarises his view that the argument promoting the right of public meeting by Lewis was irrelevant and 'unnecessarily' said. This interpretation is later reinforced in Wills J's summary, when he states that there is 'no trace in our law books' of such 'rights', and referring to Lewis's argument that these rights rested upon 'dedication', Wills J confirmed that:

The only "dedication" in the legal sense that we are aware of is that of a public right of passage, of which the legal description is a "right for all her Majesty's subjects at all seasons of the year freely and at their will to pass and repass without let or hinderence... [and continued to state that a claim to the right of public assembly is] in its nature irreconcilable with the right of free passage, and there is... no authority whatever in favour of it."²¹²

Furthermore, Dicey's assessment of the perceived 'right' to public meeting also supports this view. He stated, 'it can hardly be said that our constitution knows of such a thing as any specific right of public meeting.'²¹³ In ensuing case law this stance is again reiterated.²¹⁴

With regard to meetings at Trafalgar Square, a further point lay in reference to an Act of Parliament which established that 'the Commissioners of Works have a right to say whether or not it shall be so used.'²¹⁵ Incidentally, the Works Office later

²¹¹ P. Thornton, *The Law of Public Order and Protest*, Oxford University Press (2010) p. 119

²¹² *Ex parte Lewis* (1888) 21 QBD 191, 197.

²¹³ Dicey, *An Introduction*, p.271. Although Dicey's text was first published in 1885 (three years before *Ex parte Lewis*), it was continuously updated until 1908 and this quote is taken from a 1959 reprint of that text.

²¹⁴ See *Duncan v Jones* below.

²¹⁵ *Ibid* at 198.

delegated these powers to the Commissioner of Police in 1892.²¹⁶ Following the defeat at common law level to establish the right of public meeting, two Bills were later introduced to Parliament in an attempt to guarantee such rights under statute. The Trafalgar Square (Regulation of Meetings) Bill 1888 was omitted from the Royal Speech in 1889, and an amendment was made to express regret that legislation ‘to safeguard the long accustomed right of public meeting in Trafalgar Square’ had been discounted.²¹⁷

In July 1888, Cunninghame Graham introduced the Public Meetings in Open Spaces Bill which was directed to declare and regulate the right of public meeting. Clause 1 stated that where the public had at any time used or enjoyed any open space for the purpose of public meetings in the last 20 years, then the public shall be ‘deemed for all purposes to have acquired an absolute and inalienable right to the user thereof for the said purposes.’ The penalties stipulated under this Bill, demonstrate the intention of its drafters to protect free speech and assembly. Clause 3 states that the penalty for a breach of the regulations of the Act would be a fine not exceeding £5. Clause 4 provides that, for the unlawful interference, disturbance or molestation of a public meeting, or use of violence or intimidation against a procession, persons, or a person proceeding to a meeting, ‘shall be guilty of a misdemeanour, and liable on conviction thereof, on indictment, to imprisonment for a term not exceeding *one year*, or to a fine, in the discretion of the Court.’ The Bill did not progress past its second reading. Despite the increased debate on public meetings following the Trafalgar Square riots, attempts to secure a constitutional right through both the courts and Parliament failed, leaving the police and local authorities free to utilise the

²¹⁶ L. Keller, *Triumph of Order: Democracy and Public Space in New York and London*, Columbia University Press (2010), p. 139.

²¹⁷ *HC Deb* 05 March 1889 vol 333 cc993-1060.

ambiguous and ill-defined powers under the breach of the peace doctrine. The wide discretion this ultimately provided for the police subsequently led to inconsistent practice being applied across the country.

3.2) The Unemployed Manchester Marchers 1908

Before the First World War, the practice of provincial police constabularies relating to public meetings was often inconsistently applied. This is demonstrated by the different receptions received by the unemployed workers of Manchester who marched through the Midlands on route to hand in a petition to Parliament in London in 1908. The contrasting responses of the Birmingham and Coventry police authorities could not be more prominent. Firstly, the Manchester men arrived at Birmingham and were warned by the police that they could not walk in processional order through the streets in the centre of the city, or hold an open air meeting there. The newspaper reportage does not record what legal authority was utilised, or question the legality of the police action, but it can be deduced that the police order was a 'loose' interpretation of the common law power to prevent a breach of the peace. Despite the police order, the leaders, Stewart Gray and Jack Williams, declared their 'intention of asserting their rights of free speech.' They wanted to address a crowd at Chamberlain Square and following the ban Gray was reported to have said to a Police Inspector, 'I tell you frankly that there will be a meeting.'²¹⁸ An attempt by Gray to meet with the Mayor to resolve the issue was also reported to have been hindered by the police who refused him entry to Mansion House. Undeterred, the procession which consisted of flags, banners and a hand cart carrying the petition for local people to sign proceeded and was met by a 'strong force of police.' After unsuccessful negotiations, the unemployed began to advance,

²¹⁸ *Manchester Courier and Lancashire General Advertiser*, 31 Jan 1908.

the police obstructed their progress, and 'a scene of extraordinary violence ensued.'²¹⁹ The *Manchester Courier* was in no doubt who to attribute the cause of the violence to declaring 'A riot, which nearly attained the most serious proportions, occurred... owing to the aggressive attitude which was displayed by the body of Manchester unemployed.'²²⁰

When it became clear that the unemployed could not break the police cordon, many of them began to march to Coventry. The others attempted to break through the police lines and four men were arrested during the disorder. Two of which were released on the undertaking that they would leave the city, and the other two men were charged with disorderly conduct at the police court. They were subsequently discharged by the magistrates under the assurance that they would leave the city and join the rest of the group. When the unemployed men reached Coventry on Saturday evening they were 'well received by local labour men.' They were provided with sleeping quarters for two nights at the Clarion Club and given three meals on Sunday, including one hot meal. The police were also hospitable, and allowed the unemployed to hold public meetings, and make collections.²²¹ These contrasting examples illustrate the extent of police discretion available in response to facilitating public meetings in two towns just 20 miles apart.²²²

The previous examples of policing public meetings in 1888 and 1908, demonstrate two key complexities that marked public order policing. Firstly, there was the autocratic police response regarding Trafalgar Square, which heavily relied upon their discretionary powers under the common law to close public meetings and

²¹⁹ *Lichfield Mercury*, 31 Jan 1908.

²²⁰ *Manchester Courier and Lancashire General Advertiser*, 31 Jan 1908.

²²¹ *Lichfield Mercury*, 31 Jan 1908.

²²² For other examples on the inconsistent police practice in different regions during this era, see Chapter 4 and the 'Report of the Departmental Committee on the Duties of the Police with respect to the Preservation of Order at Public Meetings' (1909).

disperse an assembly, or to prohibit public meetings in advance for an undisclosed period of time. The Trafalgar Square incidents also demonstrate the willingness of the courts to approve of such police action. The second example from the West Midlands demonstrates how the practice of public order policing varied from one police authority to the next. Both problems can be seen as the result of wide discretionary police powers under the breach of the peace doctrine, and demonstrates the susceptibility of these powers to political partiality and discrimination. It is these considerations that must be acknowledged when considering the various police practice utilised in the era of the BUF and their anti-fascist opponents.

4) Mosley and Trenchard on Freedom of Speech

In a similar manner to the examples given from the 1880s and 1908, BUF propaganda also frequently referred to the 'established British right of free speech.'²²³ This terminology was used to justify the necessity of using force against political opponents. Mosley initiated this principle when he formed the New Party in 1931. Arguing that they had experienced organised disruption of their meetings he declared, 'We are going to defend the right of free speech in this country and will not tamely submit to methods of violence and intimidation.' Referring to his organisation of stewards trained to deal with violent interruption, which the *Western Daily Press* dubbed an 'army', Mosley stated, 'The only methods we shall employ will be English methods. We shall rely on the good old English fist.'²²⁴ When Mosley formed the BUF a year later, these organised stewards became known as the Fascist Defence Force.

²²³ *The Blackshirt*, 15 June 1934, issue 60, p. 2.

²²⁴ *Western Daily Press*, 16 May 1931.

Mosley's concept of freedom of speech was later formulated in an article published in *Action* in 1936. It was a scathing attack on the 'failing' democratic system that, instead of dealing with the assailants of free speech, the Government used the law against the defenders of free speech. Mosley recorded:

bricks were still whistling freely through the air, and round us, on the ground, were unconscious Blackshirts, savagely mauled by a highly organised Red mob because they had ventured to maintain an "Englishman's right of Free Speech" at their own meeting.²²⁵

Mosley's reference to free speech as an 'Englishman's right' was an effective propaganda tool, used to justify the use of Blackshirt violence, and to discredit communism as an alien threat to English values. Mosley still referred to free speech as a 'right' in his 1968 autobiography, *My Life*. He mentioned the organised minority who attempted to deny the right of free speech to the people, and even claimed of his Blackshirts that, 'These devoted young men saved free speech in Britain.'²²⁶

Countering Mosley's definition of freedom of speech, the Metropolitan Police Commissioner, Lord Trenchard, stated that free speech did not mean that people could express their views without interruption from political opponents, but that people were free to air their views without *official* interference from the Government, or the police acting on their behalf.²²⁷ However, as free speech was not a legal right, the police did have the common law duty to prevent people from addressing a crowd if it was reasonably anticipated that it would result in a breach of the peace.

In *Justice of the Peace and Local Government Review*, the concept of English 'rights' was addressed in relation to public meetings in public places. It stated that such a right did not exist in legal terms, but it existed as a 'quasi-constitutional right' based

²²⁵ *Action*, 24 Oct 1936, number 36, p. 9.

²²⁶ O. Mosley, *My Life*, (Friends of Oswald Mosley, 2006) p. 245, downloaded from <http://www.oswaldmosley.com/downloads/My%20Life.pdf> on 15 April 2010.

²²⁷ TNA CAB 24/250 'Memorandum by the Commissioner of Police of the Metropolis', p. 1.

on 'practice of very long standing [that was] not lightly to be interfered with'. The right to public meetings in public places was 'only subject to the overriding right of His Majesty's subjects to move freely about the highways... and to the duty of the police to prevent breaches of the peace'.²²⁸ This reveals that such freedoms had meaning and importance to the people and the state in principle, but as unwritten rights, they had no legal protection.

5) The Police at BUF Meetings

When the Blackshirts became a recognisable presence on the streets of Britain, the occupation of public space by fascist and communist speakers regularly caused conflict and disorder. BUF meetings frequently attracted opposition from anti-fascist opponents, who responded to their provocative political doctrine by constantly interrupting speakers by cat-calling, singing or throwing missiles. The question of provocation at public meetings raises the same issues discussed in Chapter 2 above. The judgments of *Beatty v Gillbanks* and *Wise v Dunning* determine that there is a significant point when the disorder that results from the provocation of an individual or group can be deemed to be a natural consequence or not, and subsequently identify who was culpable and who the police should direct their action towards. Although anti-Semitism was not part of official BUF policy from the outset, their militaristic appearance, association with the dictatorships of Italy and Germany, disapproval of the political system and desire to set up the corporate state, outspoken hatred of communism, and fast growing reputation for political violence, generated widespread political opposition. Opposition to BUF activism, whether organised or spontaneous, was a regular feature of their meetings and became a particular feature for the police in devising a strategy that minimised the risk of

²²⁸ *Justice of the Peace and Local Government Review*, vol. XCIX, number 44, 2 Nov 1935, p. 703.

disorder. This was particularly resonant in the preparations for the policing of a large BUF rally and anti-fascist demonstration at Hyde Park in 1934.

5.1) Hyde Park 1934

Correspondence between the Home Office and the Metropolitan Police reveals the difficulty in policing large scale BUF meetings that were advertised in advance. The BUF usually cooperated with the police authorities when planning large scale meetings and demonstrations. In 1934, the BUF had planned a great rally in London's White City arena which had the capacity to hold between 80,000-90,000 people. This was later relocated to Hyde Park and rescheduled for 9 September. Martin Pugh attributes this to the deliberate stifling of BUF activity by Hugh Trenchard, stating that 'he intervened to insist that the owners allow police inside.'²²⁹ This was a reaction to the disorder witnessed at the Olympia hall when the police did not enter the arena despite hecklers being evidently assaulted by Blackshirt stewards which is discussed in the next chapter. BUF propaganda declared that the change in venue was due to the potential damage to the running tracks ahead of the Empire Games staged there the following day.²³⁰ The relocated demonstration, now being in a public place meant that the Metropolitan Police had more control in maintaining order, and Blackshirt stewards had no authority to remove or eject interrupters from a meeting held in a public place. With the anticipation of booing and cat-calling amongst the audience, Frank Newsam, a leading civil servant, declared that it was 'no part of the duty of the Police to preserve quiet at open air meetings, and it is submitted that the Police should not attempt to deal with such conduct,

²²⁹ Pugh, *Hurrah*, p. 170.

²³⁰ *Blackshirt*, no 64, 13 Jul 1934.

unless disorder arises as a result of it.²³¹ Newsam was appointed by the Home Office in 1933 to 'address the problems caused by the disorders resulting from the activities of the British Fascists'.²³²

The Metropolitan Police and the Home Office were attentive to the threat of organised disorder from anti-fascist organisations who had advertised their opposition to the BUF meeting in Hyde Park with pamphlets declaring, 'Answer the Fascist Challenge in Hyde Park', with emotive reminders of the violence utilised by the Blackshirts at Olympia.²³³ A major consideration that the authorities contended with in planning the policing of this event was the possibility of large numbers of anti-fascists assembling with the intention of preventing the fascists reaching their platforms. The BUF were already granted permission from the Commissioner of Works to hold a meeting in Hyde Park, with the only stipulation that the police should dictate where their vans, which they use as speaking platforms, should be placed. Newsam had already warned Trenchard and Gilmour that it was likely that the police would be called upon by the fascists to assist them in clearing a path through the crowd to reach their meeting point.²³⁴ He advised that it could only be seen as the duty of the police to prevent an obstruction of the thoroughfares and paths of the park, and not across the grass to their platforms. In this circumstance, it was the fascists' responsibility to get through the crowd without creating disorder. He added that the police should not interfere unless the fascists attempted to launch an attack on the crowd to reach their destination, and that if there was a densely packed crowd around the fascist platform, then the fascists should be informed that the police

²³¹ TNA, HO 45/25383. Disturbances: Anti-fascist activities; anti-fascist demonstrations and activities directed against meeting of the British Union of Fascists in Hyde Park on 9 Sept 1934 (1929-34).

²³² Allen of Abbeydale, 'Newsam, Sir Frank Aubrey (1893-1964)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004; online edn, Jan 2008.

²³³ TNA, HO 45/25383/571 and 572. 'Remember Olympia' and 'A Woman tells of Fascist Terror'.

²³⁴ TNA, HO 45/25383. F. Newsam, Home Office report, 7 Sept 1934.

would not allow them to force their way through. Alternatively, Newsam argued that if Mosley made plans for his supporters to arrive early to keep the path open, then it would be the duty of the police to prevent any hostile elements from jostling them off the ground. This, he stated, could be justified as such action would be likely to lead to a breach of the peace.

Responding to Newsam's memorandum, Trenchard declared that it would be 'ludicrous' if following the permission granted by the Commissioner of Works and the stipulation given by the police on the location of the platforms, that the BUF were prevented from reaching their meeting place because of their political opponents. Gilmour also acknowledged this situation and defended the decision that the police would assist the fascists by clearing a path through to the platform, if necessary, giving several reasons. One was that inaction on behalf of the police would only inflame the fascist propaganda that free speech was unattainable in this country. He also compared the situation to May Day demonstrations and insisted that the police would not allow that to be obstructed by Labour supporters. Finally, he added that if the police did not act to prevent the anti-fascists from surrounding the fascist platform, then serious disorder may occur. Regardless of this, Newsam remained opposed to direct police involvement and argued that any view that the police were facilitating the fascists arriving at their platforms may only precipitate disorder.²³⁵

The debate over how to police the demonstration at Hyde Park between the Home Office and Lord Trenchard demonstrated the scope of discretion available with the competing potential outcomes considered. Despite the view that police facilitation of the BUF meeting would inflame anti-fascist protesters, Trenchard's tactic had succeeded and the Hyde Park meeting itself passed without serious incident. The

²³⁵ Ibid.

problem of anti-fascists crowding the BUF platform was averted by a cordon of police who kept the area clear. The Special Branch report acknowledged that while the opposing meetings were in progress, speakers from each meeting urged their supporters not to go to each other's meeting. It was also reported that all of the anti-fascist speakers, located at four points around Hyde Park, emphasised that 'the counter-demonstration had not been organised as a display of violence, but to show a mass working class opposition to fascism'.²³⁶ The BUF held five separate speaking platforms in Hyde Park until Mosley's address, and the separate audiences congregated together around platform four to hear him speak. It was also recorded that the noise generated by the booing and singing made it impossible for anybody outside of the police cordon to hear the speeches, and added the majority of the 20,000 audience members were hostile to the BUF. The total number of those who attended Hyde Park was estimated to have been between 100,000-150,000.²³⁷ At the close of the proceedings, the police cleared a way through the crowd and escorted the BUF members back to their headquarters, while a crowd of 3,000 followed the procession and booed the Blackshirts. The crowd was then dispersed by the police and no arrests were made. In Hyde Park, 18 arrests were made for offences including using insulting words or behaviour, obstructing the police and assault.

Newspaper reportage highlighted the use of new technology utilised by the police. The *Western Morning News* reported that a police autogyro hovered at 1,500 feet for observational purposes and police cars 'fitted with wireless' circled the crowd.²³⁸ There was also significant praise for the police operation. The *Western Daily Press*

²³⁶ TNA, HO 45/25383. Special Branch Report Re Demonstrations at Hyde Park, 10 Sept 1934.

²³⁷ *The Daily Express*, 10 Sep 1934.

²³⁸ *Western Morning News*, 10 Sept 1934.

claimed that the demonstrations passed off peaceably enough, not because of the conduct of the demonstrators, but because of the police, 'who were present in sufficient force to overawe the unruly and quell any incipient attempt to create disorder.'²³⁹ The proficient police operation and the condemnation of the activities of the fascists and anti-fascists was satirised in the *Daily Express* the day after the Hyde Park rally. The cartoon depicted the rival political movements which were intent on creating disorder being overcome by the strength of the police and is illustrated in figure 3.1.



Figure 3.1 *Daily Express*, 10 September 1934. Permission to reproduce this image has been granted by Express Newspapers/Express Syndication.

At the Marlborough Street Police Court the following day, the 18 charges were heard by magistrate Boyd. One significant charge was brought against a fascist who allegedly threw a stone at a police officer which struck him below the eye. The fascist Hugh Hare, an actor, directing his evidence towards the police officer in question, enquired, 'Did it occur to you that I was giving the fascist salute?' and 'Do I look like the type of person who would wantonly throw a stone?' Following the evidence of Hare and others, Boyd was satisfied that there had been a mistake and Hare was

²³⁹ *Western Daily Press*, 11 Sep 1934.

discharged. Another fascist, Thomas Collins, was treated more seriously by Boyd. Following a guilty plea on the charge of using insulting words and behaviour, the magistrate said that to impose a fine would be ridiculous and bound him over for 12 months with a surety of £10.²⁴⁰ The newspaper reports do not declare the political allegiance of Collins, but the Special Branch report claimed him to be the same Thomas Collins who was arrested during the Suffolk Tithe dispute and was convicted with 19 other members of the BUF for conspiring together to effect an act of public mischief.²⁴¹ Interestingly, he was bound over for two years following this charge, but the binding over order was not mentioned by Boyd following the Hyde Park demonstration.

The Home Office files reveal the tension between Trenchard, Gilmour and Newsam on how to police the fascist event. The tactics utilised by the police to ensure public order were successful and achieved the praise of the press. Newsam's concern that if the police actively aided the fascists it would precipitate disorder did not materialise. Yet, the event proved to be a useful propaganda tool for the anti-fascists' claims of pro-fascist police partiality. The communist newspaper, the *Daily Worker* used the police operation at Hyde Park to demonstrate political bias of the authorities:

The British Union of Fascists carries on its activities only by gracious permission of Lord Trenchard and His Majesty's Government... Mosley was only able to appear in Hyde Park because the entire London police was mobilised in his defence. For every Blackshirt there were three or four policemen. And from all over the country comes the same story of police protection for Blackshirts.²⁴²

From the Home Office discussions in preparation of the fascist and anti-fascist rallies at Hyde Park, the conflict in defining appropriate police tactics was a delicate

²⁴⁰ *Nottingham Evening Post*, 10 Sep 1934.

²⁴¹ TNA, HO 45/25383.

²⁴² *Daily Worker*, 22 Sep 1934.

balancing act. The main element of negotiations was to reduce the risk of disorder, although this involved ensuring the fascists were not prevented from holding their meeting. It was also considered vital that the police action did not give fuel to fascist or communist propaganda. Yet, in their desire to avoid fascist criticism that free speech was unattainable, it became inevitable that communist propaganda would criticise the police for being pro-fascist. The large scale events allowed the authorities the time to organise police tactics, liaise with the respective groups and make contingency plans in the event of anticipated disorder. Yet, around the country Blackshirts took to the soap boxes on a regular basis to attract the attention of local residents and passers-by. The responses by different police officers on the spot varied between the regions and questions the extent to which free speech was attainable.

5.2) Plymouth 1934: “Go on boys, get stuck into them.”²⁴³

The typical image of Blackshirt meetings, as portrayed by BUF propaganda, is of fascist speakers lawfully endeavouring to attain a hearing amid the organised disruption of a minority of communists. This heroic stance was also depicted on BUF cartoons, illustrated in figure 3.2.

Although disruption was commonplace at fascist meetings, it was not always organised, and in turn, the behaviour of the fascists was not always lawful. At a meeting in Plymouth Market Square on 11 October 1934, the actions of four Blackshirts resulted in them being charged at the City Police Court. Three of the defendants, William McIntye, George Clarke and Kenneth Davis, were found guilty of committing a breach of the peace and assault and sentenced to six weeks hard

²⁴³ *News Chronicle*, 19 Nov 1934.

labour. The other, Michael Goulding who was the speaker at the meeting, had his charge of inciting a breach of the peace dismissed.

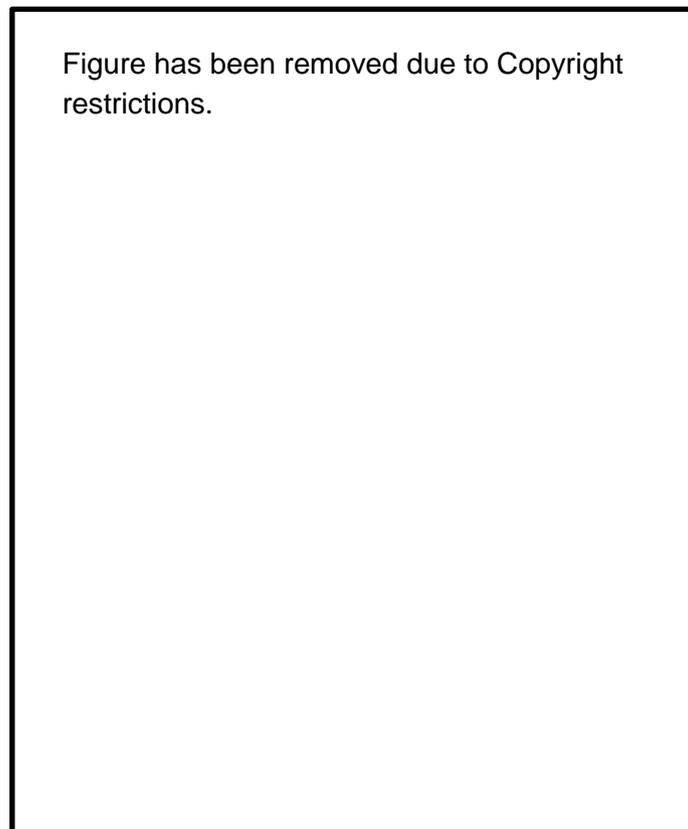


Figure 3.2 BUF postcard advertising Mosley's *Fascism* booklet, 1936.

It was reported that 20 Blackshirts arrived at the Market Square in a closed van on 11 October when a Trades and Labour Council meeting was already in progress. The crowd was estimated by one witness to have been 7,000-8,000 strong.²⁴⁴ McIntyre, Clarke and Davis were in plain clothes and walked amongst the audience. Giving evidence, police officer Mitchell stated that Goulding spoke on the roof of the van, surrounded by Blackshirts for ten minutes. The crowd remained noisy and then Goulding instructed McIntyre, Clarke and Davis to attack the crowd by raising his

²⁴⁴ *Western Morning News*, 17 Nov 1934.

hand and commanding, 'Go on, boys, get stuck into them'.²⁴⁵ He then described how the three fascists then struck out and hit anyone within their reach. Other statements describe the particularly brutal nature of the attacks. Chief Constable William Johnson stated that one man, who was struck several times, rushed into the doorway of Woolworths where he was, 'further knocked about until he was in a state of collapse.'²⁴⁶ The three fascists wore insulating tape around their knuckles and all admitted to having reputations as competent boxers. They claimed that they expected disorder and the tape would protect their 'fragile' hands. In the witness box, Police Superintendent Hutchings stated that the tape would 'increase the force of a blow [as the tape would] harden through perspiration.'²⁴⁷

It was alleged that Goulding attempted to join in the disorder after giving his instruction but was stopped by the police. For the defence, barrister Fearnley-Whittingstall argued that the disorder started after a brick, which was thrown from the crowd, narrowly missed Goulding, and another man struck Davis on the back. The provocation towards the fascists was not enough justification for the assaults committed by McIntyre, Clarke and Davis. The presiding magistrate ruled:

[W]e have no doubt that they came to Plymouth that night with the intention of fighting – at any rate, prepared to do so – on the least provocation. In addition, it has to be remembered that they were all expert boxers... Conduct of this sort cannot be tolerated in this city,²⁴⁸

This incident highlights the trouble that the BUF had in attaining a hearing at public meetings. It also demonstrates the competition for public space. In this case, the Trades Union meeting was already in progress when the Blackshirts arrived, but as there was no way of reserving public space, the competing movements could easily

²⁴⁵ *Western Gazette*, 23 Nov 1934.

²⁴⁶ *Western Morning News*, 13 Oct 1934.

²⁴⁷ *Western Evening Herald*, 16 Oct 1934.

²⁴⁸ *Western Morning News*, 17 Oct 1934.

hinder each other's meetings. At Plymouth, the police used their discretion to allow the fascists the opportunity to address the public, despite an opposing political meeting already being in progress. Although this action promoted the values of free speech, the jeers, cat calls and singing from the crowd which hindered the Blackshirt meeting also prevented the trade union meeting from continuing. The *Western Independent*, which was critical of fascism, declared that the 'right to freedom of speech was being denied by the holding of these meetings not by their banning.'²⁴⁹ Yet, as soon as disorder occurred the police responded quickly and the BUF meeting was closed. The Trade Unionists were said to have 'remained quiescent on their rostrum' during the Blackshirt disturbance and 'composedly resumed their speeches' when the fascists had vacated their position.²⁵⁰

5.3) Mosley Acquitted of Riotous Disorder at Worthing 1934

The BUF meeting in Worthing on 9 October resulted in Mosley, William Joyce, Charles Budd and Bernard Mullans being summonsed on the charge of riotous assembly.²⁵¹ Mosley and Mullans were also charged with individual cases of assault.

The five necessary elements for the common law offence of riot were summarised by Phillimore J in *Field v Metropolitan Police Receiver*²⁵² as:

- (1) number of persons, three at least;
- (2) common purpose;
- (3) execution or inception of the common purpose;
- (4) an intent to help one another by force if necessary against any person who may oppose them in the execution of their common purpose;

²⁴⁹ Gray, *Blackshirts in Devon*, p. 73. Gray's summary from the *Western Independent*, 14 Oct 1934.

²⁵⁰ *Western Independent*, 14 Oct 1934.

²⁵¹ William Joyce was national propaganda officer and later gained notoriety as Lord Haw Haw during the Second World War. Charles Budd was a Blackshirt officer for the West Sussex area and Bernard Mullans was described as a member of the Blackshirt movement.

²⁵² *Field v Metropolitan Police Receiver* [1907] 2 KB 853.

(5) force or violence not merely used in demolishing, but displayed in such a manner as to alarm at least one person of reasonable firmness and courage.²⁵³

Mosley had conducted an indoor meeting at the pavilion on the sea front, a building he described as 'a large tin tabernacle of flimsy construction.'²⁵⁴ He alleged that the tin sides of the pavilion were struck by sticks and stones during the meeting. According to the prosecution, the crowd which had assembled outside had been orderly and good humoured and it was the actions of the fascists that had incited disorder. Prosecuting at Worthing Police Court, John Flowers KC alleged that the four defendants, and other members of the fascist movement acting under their encouragement, walked up and down outside the pavilion and assaulted inoffensive and law-abiding citizens. He continued the prosecution's case, stating, 'there was taking place a perfectly disgraceful and intolerable state of things. Violence was being used by the members of the defendant's party against all and sundry.'²⁵⁵

The defence responded with the typical BUF stance of being victims of disorder rather than the instigators. He stated, 'If ever a thing has been proved to the hilt before a Court of Law it is this – that they were more sinned against than sinning.' He then appealed to the bench not to 'stretch the law against freedom of speech, the freedom of expression, and against minorities.'²⁵⁶ The prosecution's argument countered this by stressing the orderly nature of the crowd and considered that the reason that the BUF dress in uniform and travelled to Worthing with bodyguards and ambulance men was to meet violence with violence.²⁵⁷

²⁵³ Ibid. at 860.

²⁵⁴ Mosley, *My Life*, p. 296. This incident is discussed here as it the action of the Blackshirts in public that was scrutinised in this case, rather than on the private premises of the meeting hall.

²⁵⁵ *Hull Daily Mail*, 8 Nov 1934.

²⁵⁶ *Daily Telegraph*, 10 Nov 1934. Newspaper clipping from TNA file MEPO 2/10651.

²⁵⁷ Ibid.

In one instance, Mosley was alleged to have struck a member of the crowd. In addition, a female witness also alleged she was hit on the head by a Blackshirt. Police witnesses also highlighted the orderly conduct of the crowd and stressed the unprovoked use of force by the Blackshirts.²⁵⁸ Much of the disorder was said to have occurred as Blackshirts violently pushed their way through crowds at either a café, where Mosley had supper, or Warwick Street, outside the local BUF headquarters. Mosley had received reports that an angry mob were 'beleaguering' their headquarters with women inside and on arriving there himself general fighting ensued and some Blackshirts came out of the office to assist them. The prosecution highlighted that the Blackshirts had taken a fighting attitude to the orderly crowd. An example of the unprovoked attacks included the assault of a solicitor's clerk who was just passing through Warwick Street after posting a letter was struck on his head, nose and jaw by Blackshirts which left him unconscious and covered in blood. Mosley also claimed that he stayed on the streets until order was restored because he did not want to endanger the females within the headquarters. In his autobiography, Mosley's recollections of the event glorify the retribution of the Blackshirts, recalling that the 'Reds had arrived in coaches from far away, but after protracted debate left in some disorder... [and on the disturbance at Warwick Street stated] the Reds were surprised to see us... and again they got the worst of it.'²⁵⁹ The police court proceedings lasted for 5 days before the Bench retired and commit all four defendants for trial at the Lewes Assizes.

Prosecuting, John Flowers KC stated that this was not a political prosecution but one brought by the West Sussex Police to deal with 'a very disgraceful, discreditable and

²⁵⁸ Ibid.

²⁵⁹ Mosley, *My Life*, p 296.

violent state of affairs in the streets of Worthing.²⁶⁰ It was also stressed by the prosecution that none of the witnesses that were assaulted had any particular political views and their evidence was supported by 'respectable persons... without any political axe to grind.'²⁶¹ Mosley had alleged that the prosecution was brought about by the Government of the day who he claimed controlled the police. It was for this reason he stated that the police evidence was 'contradictory and false'.²⁶² Under cross-examination, the police tactics to control any anticipated disorder arising from the BUF meeting was exposed. Firstly, the evidence that the crowd was orderly was challenged by the declaration that things from the crowd, including tomatoes, were thrown through the windows of the café which hit waitresses in the face. Furthermore, the crowd were also alleged to have been booing and shouting at women and chasing them through the streets. None of the police officers called to testify witnessed these scenes. In addition, only four police officers were originally stationed in the vicinity of the BUF meeting despite notification from Budd that they expected organised disorder from their opponents. It was argued for the defendant that the police did 'practically nothing' in preparation for the meeting despite the crowd numbering the same as that of a general election.²⁶³ Branson J rejected the prosecutions argument that the common purpose in this case which constituted riot was the holding of the meeting and parading the streets. He stated,

It is not suggested here that anything which happened before the events in Warwick Street constitutes a riot. I cannot find any evidence of any common purpose or object with regard to which they can be inferred to have agreed to use violence.²⁶⁴

²⁶⁰ *Derby Daily Telegraph*, 17 Dec 1934.

²⁶¹ *News Chronicle*, 9 Nov 1934.

²⁶² *The Star*, 13 Nov 1934. Newspaper clipping from TNA file MEPO 2/10651.

²⁶³ *Daily Telegraph*, 19 Nov 1934.

²⁶⁴ *Ibid.*

Furthermore, the violence that had occurred at Warwick Street broke out in the absence of the four defendants. Branson J instructed the jury to find a verdict of not guilty. The defence applied for costs against the police. However, Branson J responded,

I do not think that the police have always given evidence in this case with the fairness I am accustomed to find from the police all over the country. But I do not think it is a matter of which I ought to take so much notice as to make them pay the costs.²⁶⁵

The use of the common law charge of riotous assembly at Worthing demonstrated that some legal authorities did attempt to restrict BUF activism. If Mosley's accusation that the charge was initiated by the Government was true, then this can be seen as an effort at national level to find a legal precedent to restrict the disorder associated with the BUF. However, as no other evidence supports this notion, at the very least this trial demonstrates that at a local level, there were provincial police forces that did not demonstrate the pro-fascist stance. For instance, the officers on duty did not take any action against those members of the crowd who did cause disorder by throwing objects and using threatening behaviour such as chasing women in an intimidating way. The officers on the ground and their superiors who proceeded with the charge directed their powers against the BUF. Despite evidence suggesting that some members of the crowd used illegal methods to show their contempt of the fascists' meeting, the police used their discretion to overlook some aspects of the crowd's behaviour as they regarded the BUF as the instigators of the disorder.

5.4) Freedom of Speech for the Speaker or the Heckler?

²⁶⁵ Ibid.

At public meetings, both the speaker and the heckler have claimed that they are entitled to share their views. Yet, does the claim for free speech refer to the freedom to attain a hearing free from interruption, or the freedom to speak unconditionally and without consequence? The legal position regarding the extent free speech could be claimed was recorded in 1932 at the Birmingham Quarter Sessions. John Trotter, a labourer who addressed a public meeting, claimed the right to free speech when he was accused of inciting people to steal, assault the police, damage property, engage in unlawful assembly and riotously to assemble together. The Recorder stated in his summing up, 'There is no such thing in a civilised community as the right of free speech... You are allowed to express your opinion as far as you keep within the law and no further.'²⁶⁶ At BUF meetings, the fascist speaker or the anti-fascist heckler could both be charged for expressing opinions, if a police officer reasonably suspected that their words or behaviour were threatening, abusive or insulting with the intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned.

While it could be argued that fascist speakers incited disorder or encouraged violence through provocative and anti-Semitic speeches, it appears more common that it was audience members who heckled and showed their contempt for fascism to end up before a magistrate. One incident was reported in *The Times*. At Leytonstone, Greater London, Joseph Bennett, a bookshop manager, shouted 'Go back to Germany and eat German sausage' and 'Fascism means hunger and war' at a BUF meeting.²⁶⁷ In the opinion of the Metropolitan Police, this was likely to cause a breach of the peace and the heckler was arrested and marched to the police station. At Stratford Police Court, the defendant denied that he intended to break up

²⁶⁶ *Western Daily Press*, 25 Nov 1932.

²⁶⁷ *The Times*, 22 Oct 1934.

the meeting but simply wished to express his disapproval of fascist principles, which he declared he was entitled to do. If it was found that his intention was to break up the meeting then he could have been fined a maximum of £5 or up to one month imprisonment under the Public Meetings Act 1908. Bennett was charged with using insulting words contrary to s54 Metropolitan Police Act 1839 and was subsequently fined 40 shillings with an additional £2 and two shillings costs.

At an outdoor BUF meeting at the Plymouth Market in February 1934, the *Western Morning News* reported that the BUF area propaganda officer, Arthur Cann, was subject to 'constant interruption, and many unpolite and unprintable remarks', and the 'majority of the three hundred or so who attended the meeting made every possible endeavour to drown Cann's voice with their constant jeers.' The meeting was well attended by the police, and despite the disruption and the local newspaper's claim that the 'hecklers became so persistent that a clash between the Socialist element and the Blackshirt guard which surrounded the lorry seemed imminent' the police did not interfere with the verbal disturbance of the meeting.²⁶⁸ This is arguably an example of good police practice as although angry words were exchanged, physical hostility did not materialise and order was kept.

In contrast to the incident at Leytonstone, the exact nature of the heckling at the Plymouth meeting was not reported, and the reader is left to reflect on what the 'unprintable remarks' were. The question that separates these two examples is, at what point should the police act to prevent a breach of the peace? As the actions used by the police in both of these examples were lawful it demonstrates the extent of police discretion in deciding when and when not to act. It also establishes how police practice can vary between provincial forces which reveal inconsistencies in

²⁶⁸ *Western Morning News*, 9 Feb 1934.

law enforcement between different regions. The quote from Trenchard has already established that it was not the role of the police to protect speakers in public places from interruption that was caused by their political opponents. However, the police did have a responsibility to act when order was threatened or when threatening, abusive or insulting words or behaviour were used with the intent to provoke a breach of the peace or where a breach of the peace may be occasioned. Although the situation at the BUF meeting in Plymouth was highly inflammable, and the police could have justified an action of dispersing the crowd or arresting hecklers under the anticipation that a breach of the peace may occur, the meeting ended without incident demonstrating that some meetings, despite hostile opposition, do not require direct police interference. The police tactics of monitoring and surveillance employed at Plymouth ensured that freedom of expression was maintained and the police presence, rather than police action, was enough to ensure that public safety was preserved.

A further option available to the police was to arrest the speaker, yet this happened less frequently at fascist meetings as opposed to the meetings of the far-Left. At one meeting in London, known Jew baiter and auctioneer John Penfold, was arrested to avert serious disorder after he stated, 'The Jews are taking this country from us by their filthy methods and sweated labour. They are nothing more than usurers and parasites.' He continued to call for the removal of Jews from England.²⁶⁹ At the Old Street Police Court, Police Constable Gibbs stated that Penfold was addressing 250 people. When the crowd became hostile and started to move towards Penfold, Gibbs stated that he arrested Penfold because he saw that 'a very grave disorder was

²⁶⁹ *Nottingham Evening Post*, 28 Aug 1936.

about to take place.²⁷⁰ Penfold claimed that the prosecution was instigated by the Jews and stated that he was against the magistrate hearing his case and wanted the case to be committed to 12 of 'his countrymen'. The magistrate, Mr F. O. Langley, fined Penfold 40 shillings and ordered him to find a surety of £50 to be of good behaviour for 12 months.

These three responses demonstrate the general range of the police officer's actions at public meetings. Their discretion could be used against the speaker, the heckler, or to decide not to interfere. The arrest of Joseph Bennett for the comments made during the BUF meeting at Leytonstone was inconsistent in comparison to the Plymouth meeting, and it also needs to be questioned whether police action was appropriate and proportionate. Bennett believed that he was 'entitled' to demonstrate his disapproval of the speaker's principles.²⁷¹ Although heckling was usually tolerated at outdoor meetings, police discretion was used to take action when it was anticipated that the words or actions of a heckler were thought to result in a breach of the peace. These discretionary powers were also employed to prevent speakers such as Penfold from addressing a meeting if it was anticipated that it would lead to a breach of the peace. However, the law relating to breaches of the peace were significantly wide which left police officers on the spot to rely on their discretion in each individual situation. Nevertheless, Ewing and Gearty's claim that BUF speakers were shown a 'remarkable indulgence by the police' must be recognised and the reasons for this considered.²⁷² It has already been argued that official BUF activism promoted lawful behaviour and the obedience of its members to police instruction. Yet, the abhorrent use of anti-Semitism as a political policy presents a more difficult

²⁷⁰ Western Morning News, 29 Aug 1936.

²⁷¹ *The Times*, 22 Oct 1934.

²⁷² Ewing and Gearty, *The Struggle*, p. 329.

proposition for the frequent use of inaction by the police at fascist meetings. Thurlow has highlighted that there were difficulties in prosecuting anti-Semitic speakers because the 'fascists had developed the technique of criticizing the Jewish people as a whole rather than those present at meetings.'²⁷³ The use of police discretion to act against BUF speakers was therefore impeded by the knowledge that the chance of a successful prosecution was minimal. Indeed, even the prosecution of the fanatical anti-Semite Arnold Leese of the IFL, who had printed offensive and antagonistic attacks on the Jews, must be seen as a failure as he was acquitted of the most serious charges.

5.5) The Trial of Arnold Leese 1936

In August 1936, Arnold Leese of the Imperial Fascist League appeared at Bow Street Police Court, with printer Walter Whitehead, on charges of seditious libel and creating a public mischief relating to an article, he wrote in his Party's paper *The Fascist*. Eustace Fulton, for the Director of Public Prosecutions, read some extracts of the article which he alleged was 'intended to incite illwill and hostility between the Jewish subjects of His Majesty and other.' He recited:

The Jews are not wanted anywhere on earth. Unfortunately, they are on the earth and all over it, destroying everything good and decent by their contaminating interference... The alternatives are (1) to kill, (2) to sterilise, or (3) to segregate, and our policy is the last one, conducted and maintained at their own expense.²⁷⁴

In the article recited by Fulton, Leese also claimed that the Jews practiced the ritual murder of Christians in order to obtain blood for use in their ceremonial Passover bread. They were committed for trial at the Central Criminal Court and Leese

²⁷³ Thurlow, *The Secret State*, p. 190.

²⁷⁴ *Derby Daily Telegraph*, 14 Aug 1936.

conducted his own defence. Much of his defence was dismissed by Greaves LJ as irrelevant, and after the first day suggested that Leese sought legal advice in order to save time and the patience of the jury.²⁷⁵ However, the jury found the defendants not guilty of the more serious charges relating to seditious libel, but guilty of effecting of a public mischief. In sentencing Leese, Greaves stated,

That the public wellbeing can be served by the publication of stuff of this kind- and I call it 'stuff' advisably- I cannot imagine. Nothing can be more harmful to the public weal than that... [He continued] There is one thing you have completely forgotten, and that is that the law of England is available to every subject with equality.²⁷⁶

Leese was sentenced to six months imprisonment after refusing to pay the fine. Yet the significance of this outcome was that he was acquitted of the more serious charges. Richard Thurlow highlighted that the Home Office viewed this verdict as a precedent; its effect was that the authorities refused to prosecute anti-Semitic or racist libel unless it could be proved that it had provoked disorder.²⁷⁷ Furthermore, this condition also involved the difficulty of proving that such statements were the cause of the disorder. Although this case was related to printed material, its relation to freedom of speech at public meetings is also critical. In 1939, former BUF member A K Chesterton was not prosecuted after he was alleged to have called for Jews to be strung up on lamp-posts at a Nordic League meeting. Thurlow related this decision to the failure to convict Leese three years before, but also added that the authorities wanted to avoid giving the small movement any publicity.²⁷⁸ This demonstrates the importance of discretion at all levels in deciding whether to initiate a prosecution. Police officers are more likely to make an arrest when there is a

²⁷⁵ *The Times*, 19 Sept 1936. The following year, Leese published *My Irrelevant Defence* which included more accusations against Jews which he was prevented from discussing at the trial.

²⁷⁶ *The Times*, 22 Sept 1936.

²⁷⁷ Thurlow, *The Secret State*, p. 194.

²⁷⁸ *Ibid.* p. 195.

greater likelihood of a conviction and selective law enforcement inevitably becomes standard practice. Even the DPP needs to consider various factors, other than the express enforcing of the law, such as the need to avoid giving small extremist groups the value of publicity, or a martyr for their radical cause. Also, when Leese published another anti-Semitic article titled *My Irrelevant Defence* on his release from jail he was not charged because 'a further acquittal might be misunderstood by the public.'²⁷⁹ The decision making process at all levels of the criminal justice system therefore relies on a variety of factors and is inevitably more complex than understanding police action as overtly pro-fascist. Ewing and Gearty criticised the police stating that there was 'fragrant discrimination against the Left... [While the police] were prepared to go to considerable lengths to protect the freedom of the fascists'.²⁸⁰ Yet, this chapter has highlighted the difficulties in achieving a successful prosecution of fascists whose own methods of activism are calculatingly conscious of legal boundaries. In contrast, although Ewing and Gearty present a valuable argument for the political discrimination of the Left in this period, the confrontational methods they frequently employed against the police and their frequent promotion of unlawful practices presented extensive reasons for legal action. In addition to the differences in the methods of activism utilised by the far-Left and Right, it must also be remembered that the BUF were not seen as a threat to national security until 1940. In this respect, Thurlow stated, the BUF were 'an irritant... not a serious threat to the establishment.'²⁸¹

6) Policing Communist Activism

²⁷⁹ Ibid.

²⁸⁰ Ewing and Gearty, *The Struggle*, p. 329.

²⁸¹ Thurlow, *Fascism in Britain*, p. 75.

6.1) Communists and seditious publications

In a significant case at the Central Criminal Court in 1933, four communists were charged with conspiring to seduce soldiers from their duty and allegiance to his Majesty. The four Welsh minors had attempted to distribute *The Soldier's Voice*, a newsletter described as the organ of the Communist Soldiers, to servicemen at Newport Barracks. It was argued for the defence that communists had as much right to express their views as anybody else. Although this was not an isolated case regarding communists distributing potentially seditious material,²⁸² its importance lies in the definition of the limitations of freedom of speech offered by Humphreys J:

A person has the liberty to say that the constitution of the country or the religion of the country should be changed... that we ought to have no King, that we ought to have a Republic, or any other kind of Government. A person may go as far as that. So long as he does not offend against the law nobody can stop him. What persons cannot do, of course, is in the course of criticisms or suggestions to alter the constitution or the law to advise that they should be done by force or terrorism.²⁸³

Humphreys dismissed suggestions that the prosecution was based upon the police or the DPP's dislike of the Communist Party as 'ridiculous'. The judgment relied on whether the communists advocated changes by constitutional means, if so then suppression via a criminal prosecution must fail. If they were found guilty of offences against the Incitement to Mutiny Act 1797, their membership of any particular political party was immaterial. All four men were found guilty and their individual punishments ranged from 12 months hard labour to three years penal servitude.²⁸⁴

The activities of extreme communists were treated seriously by the authorities because offences, such as sedition and incitement to violence, were perceived as

²⁸² See Ewing and Gearty, *The Struggle*, Chapter 5, and C. Andrew, *The Defence of the Realm: The Authorised History of MI5*, Penguin (2009), Chapter 2, for other examples of communist sedition and the background of the resulting Incitement to disaffection Act 1934.

²⁸³ *Hull Daily Mail*, 14 March 1933.

²⁸⁴ *Ibid.*

threats to national security. Communist publications made frequent calls for a class based civil war. In May 1932, the *Soldiers' Voice* claimed, 'Let us use the knowledge of arms which they give us, when the opportunity presents itself, to overthrow their rule, and, in unity with our fellow-workers, to establish a free Socialist Britain', and in May 1933, the *Red Signal*, the organ for communist sailors, exclaimed 'If war does come, then it must be turned into a civil war against the capitalist warmongers and their bankrupt system.'²⁸⁵ These examples were given by the Attorney General during the second reading of the Incitement to Disaffection Bill, and concern was raised that the outcome of recent prosecutions of distributors only had the effect of driving the chief offenders underground, which created a 'somewhat sly and almost skulking breed of inciter... [that] are too shy or too cowardly to put their names and addresses to the literature which they are in the habit of producing.'²⁸⁶

6.2) The Trenchard Ban and *Duncan v Jones*²⁸⁷

In November 1931, Lord Trenchard issued instructions that forbade public meetings that were held in close proximity to employment exchanges. The Home Secretary defended this action in Parliament stating that, 'recent experience has shown that meetings held in such circumstances are liable to lead to breaches of the peace. There has been in the past, and there still is, ample opportunity for holding meetings elsewhere.'²⁸⁸ Following these instructions, meetings all over the Metropolitan Police District were broken up by police, some ending in serious disorder.²⁸⁹ The legal

²⁸⁵ *HC Deb* 16 Apr 1934 vol 288 cc742.

²⁸⁶ *HC Deb* 16 Apr 1934 vol 288 cc740.

²⁸⁷ *Duncan v Jones* [1936] 1 KB 220-221

²⁸⁸ *HC Deb* 2 Dec 1931 vol 260 cc1088.

²⁸⁹ *The Times* 28 Nov 1931.

authority that Trenchard used to make this order was vague. Even in the House of Commons, Labour MP and barrister Denis Pritt declared that the ban was:

wrapped in obscurity and secrecy that it is almost as difficult to discover what it is, as it is to discover what are the decrees of the Nazi Government... [adding] Lord Trenchard had no more right to do that than I had. He had no right at all, and no sort or kind of justification.²⁹⁰

The ban was reminiscent of Warren's prohibition of meetings in Trafalgar Square in the 1880s. A major difference in this scenario, however, was that in *Ex Parte Lewis*, it was established that an Act of Parliament had given the power to the Commissioners of Works to declare how the space at Trafalgar Square shall be used. Yet, disregarding this technicality, Wills J had reversed the onus on Lewis to provide that there was a right to public assembly. As Lewis failed to provide this, Wills J concluded that there were no grounds for charging the Metropolitan Police Commissioner or the Home Secretary with a criminal conspiracy or misconduct. Despite criticism of the Trenchard ban from the NCCL, a legal challenge to this authoritarian response to disorder also failed.

Katherine Duncan, a member of the NUWM, attempted to hold a meeting outside a training centre in 1934. Inspector Jones requested that she moved her meeting, and, on refusing and continuing to speak she was arrested and charged with obstructing the police in the execution of their duty. The NCCL sponsored her failed appeals to the London Quarter Sessions and the Divisional Court. At the Divisional Court, the appellant was represented by Labour MP Denis Pritt KC and Liberal MP Dingle Foot; both were vice-chairmen of the NCCL. They argued that it was not unlawful to hold a public meeting on the highway and that the police officer was not acting 'in the

²⁹⁰ *HC Deb* 10 July 1936 vol 314 cc1551.

execution of his duty' when he was obstructed by Mrs Duncan.²⁹¹ Citing *Beatty v Gillbanks*,²⁹² he continued to argue that the appellant could not be found guilty of a legal act because of the apprehended illegal actions of others.

Lord Chief Justice Hewart dismissed the appeal and clarified that there was no 'right' to public assembly, and it was 'nothing more than a view taken by the Court of the individual liberty of the subject.'²⁹³ He concluded that the policeman was acting within the execution of his duty and, therefore, the appellant did wilfully obstruct the respondent and dismissed the appeal. Pritt raised the issue in the Commons, stating that 'it is extremely easy for the police to take repressive measures and find that often they are approved of by the courts.'²⁹⁴ Thomas Kidd argued that the decision established a precedent that:

[T]he police have power to ban any political meeting in streets or public places at will... [and are arbiters] of what political parties and religious sects shall and shall not be accorded the rights of freedom of speech and freedom of assembly – two civil rights which even the judges of earlier times were jealous to protect.²⁹⁵

The judicial support for the authoritarian and preventative police tactics highlighted in *Duncan v Jones*²⁹⁶ and other leading cases of this era such as *Thomas v Sawkins*,²⁹⁷ subsequently strengthened the breach of the peace powers utilized by the police, widening the parameters of their discretion, and providing more opportunity for partial or inconsistent police practice.

6.3) The Baton Charge at Thurloe Square 1936

²⁹¹ [1936] 1 KB 220-221.

²⁹² *Beatty v Gillbanks* [1881-82] LR 9 QBD 308.

²⁹³ [1936] 1 KB 222.

²⁹⁴ *HC Deb* 10 July 1936 vol 314 cc 1561.

²⁹⁵ Kidd, *British Liberty*, p. 24.

²⁹⁶ *Duncan v Jones* [1936] 1 KB 218 (Discussed below).

²⁹⁷ *Thomas v Sawkins* [1935] 2 KB 249 (See Chapter 4).

Thomas Kidd was also at the heart of another incident involving the police treatment of an anti-fascist meeting at Thurloe Square, London. Their protest was a response to a BUF meeting held in the Albert Hall on 22 March 1936. The anti-fascists assembled half a mile away from the Albert Hall, in accordance with an instruction from the Metropolitan Police Commissioner. After the meeting had been in progress for 50 minutes, 20 police officers arrived, some mounted and others on foot and they allegedly proceeded to disperse the crowd without warning using batons and staves. Following several allegations about police behaviour, Dingle Foot pressed the Government to open an official enquiry. Sir John Simon declared that there was no need for an enquiry, and highlighted that the crowd had formed a cordon around the meeting meaning that the police could not approach the chairman to request that he close the meeting.²⁹⁸ The NCCL held an unofficial commission of inquiry which they hoped would bring the evidence to the public and Simon would be induced into ordering an official inquiry. This approach failed but the findings recorded that the 'crowd was perfectly peaceable and orderly' and the police would have had no difficulty in approaching the speakers. More significantly, it reported that the crowd offered no resistance to the police and:

[T]here was no necessity whatever for a baton-charge, that the baton-charge was carried out with a totally unnecessary degree of brutality and violence, that serious injuries were caused and that fatal injuries might have been caused.²⁹⁹

The responses of the Home Office and the Metropolitan Police to the NCCL's call for an inquiry has been carefully analysed by historian Janet Clark. She noted the contempt that Sir Philip Game had for the organisation, and this is illustrated by his opinion of the NCCL as 'a self-constituted body with no authority or statutory powers,

²⁹⁸ *HC Deb* 25 Mar 1936 vol 310 cc1361-78.

²⁹⁹ Kidd, *British Liberty*, p. 130.

whose principal activity is to criticise and attack the police'. He responded to the report of the inquiry declaring, '[a] more biased judgement I have never read'.³⁰⁰ Clark highlighted that for the Home Office, Sir Arthur Dixon was more sympathetic to the report, and declared that despite its 'one-sidedness... the report seems to me to give evidence of careful preparation and to merit careful consideration.'³⁰¹ Despite the friction highlighted by Clark between the Home Office and Game, it was agreed that a public inquiry would not be held as the report had 'elicited no new facts of importance'.³⁰²

Although the catalyst for the introduction of the Public Order Bill was the disorder at Cable Street described in the previous chapter, provisions were also established that were directed towards the conduct and behaviour at public meetings which expanded on the existing provisions to restrain freedom of speech.

7) Public Order Bill 1936

Several provisions were introduced in the Public Order Bill which created or amended certain offences in relation to public meetings. When the Home Secretary, Sir John Simon, read the Bill a second time on 16 November, he stressed that the object of the Bill was not to legislate against anybody's creed, or to distinguish from one extreme creed or another, but to legislate against the new methods that had recently been adopted by some movements. However, political violence and disturbances were not new to British political meetings, and this was recognised by Sir John Simon who stated that there was, 'plenty of noise and roughness in our political methods, but this roughness and this noise have been on the whole tolerant

³⁰⁰ Clark, 'Striving', p. 185.

³⁰¹ Ibid. p. 184.

³⁰² Ibid. p. 186.

and good humoured.’ In the following debate, this view had been challenged by those whose experiences of political ‘roughness’ were neither tolerable nor good humoured. The most detailed account came from Conservative MP, Commander Bower, who suffered the organised break-up of his meetings in his constituency of Cleveland in North Riding. This included the use of abusive language, the smashing of windows, the breaking of chairs, their female supporters were kicked and clods of earth were thrown at the speakers. He also mentioned that he was physically attacked on stage and his speaker system was damaged. He attributed these instances of organised disruptions to Labour Party supporters, and criticised that until recently the party did little to prevent it. This demonstrated that the disruption of public meetings was not uniquely associated with the extreme creeds of the fascists and communists, but was also prevalent among mainstream political parties in some areas. The increasing violence between fascist and anti-fascist supporters at public meetings legitimised the introduction of the Public Order Bill, but its provisions had the potential to protect all parties from political disturbances. However, the provisions themselves would still rely on a certain amount of police discretion.

Labour MP for Hackney South, Herbert Morrison recounted his amazement of the ‘dangerous vigour’ about his public meetings in Cornwall, in which he had to mind his step. He continued to state that he had been shouted down and threatened with violence by Tories, and that the actions of the Communists were notorious.³⁰³ Despite the primary concern of fascist violence, there was a prevailing attitude that the Bill needed to protect the political speakers and prevent all organised public disruption of political meetings. Commander Bower believed the Bill did not successfully tackle this, as he stated, ‘This hooliganism has gone on far too long,

³⁰³ *HC Deb* 16 November 1936 vol 317 cc1455.

and I am afraid there is nothing in this Bill which will put an end to it.³⁰⁴ In summing up the debate, the Attorney General revisited the question and declared, 'there is no doubt about the feeling which has been voiced on all sides of the House that the organised cold-blooded and persistent interruption of meetings is something to be reprehended.'³⁰⁵

William Gallacher made an important distinction between the propaganda of the Left and the significance of the BUF in the East End. Being politically provocative, he claimed, was an essential feature of the United Kingdom, but using abusive or insulting language directed at racial or religious sections of the community is entirely different. He stated that the police already had powers to deal with that, but they should be increased if necessary.³⁰⁶ Thus, it can be determined that the division between these different uses of provocative language were an important factor in framing legislation which would effectively restrict freedom of speech. Yet, while the general debate is about how to impose conditions on the British fascists at their meetings, many arguments, including those mentioned above, also demonstrate the desire for politicians to protect their own political meetings from disruption by political opponents. Political violence, therefore, was not completely marginalised to the radical doctrines of the fascists and the communists, but still played a role in mainstream politics despite the increasing intolerance towards it.

Clause 4 made it an offence for anyone present at any public meeting or on the occasion of any public procession to have with him any offensive weapon without lawful authority. When the Marquess of Dufferin and Ava summarised the Bill on the second reading in the House of Lords, he said of clause 4, 'I am afraid that that

³⁰⁴ Ibid at c1404.

³⁰⁵ Ibid at c1471.

³⁰⁶ *HC Deb* 23 Nov 1936 vol 318 c73.

clause is only too necessary to-day.’ The clause was questioned by Lord Atkin, who stated that without a definition of ‘offensive weapon’ it may be possible that an innocent bystander with a walking stick may be charged with such an offence and the question for the jury of whether the stick was intended as a weapon or not would be an extremely difficult one.

Clause 5 created an offence for any person who in any public place or at any public meeting used threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace, or whereby a breach of the peace is likely to be occasioned. The only amendment in the wording from s54(13) Metropolitan Police Act 1839 was to change ‘in any thoroughfare or public place’ to ‘any public place or at any public meeting’ which extended the power of the police to public meetings, which by definition would also include those held on private premises.³⁰⁷ The 1936 Act, introduced the charge of insulting words or behaviour to the whole nation as it had only previously existed in London under the 1839 Act, and in some larger towns and cities under local Acts. Ronald Kidd claims the Metropolitan Police referred to this power as ‘the breathing Act’ because to get a conviction under it was ‘as easy as breathing’.³⁰⁸

Clause 6 amended the Public Meeting Act 1908, and provided the police with the power to arrest anyone who they reasonably suspected of committing an offence under that Act by acting in a disorderly manner in an attempt to break up a lawful public meeting and refuses to give their correct name or address. As the BUF did not organise the interruption of opponents’ meetings at this time, this clause was more likely to have been utilised to protect fascist meetings. However, the experiences of

³⁰⁷ See Chapter 4 for police powers in relation to public meetings on private premises.

³⁰⁸ Kidd, *British Liberty*, p. 74.

disruption and hooliganism shared by many MPs suggest that they also wanted the increased power to protect their own meetings.

8) The Police, Anti-Semitism and the Public Order Act

In his report for the year 1937, the Metropolitan Police Commissioner, Sir Philip Game, declared that the Public Order Act 1936 had 'a good effect on the conduct of political meetings... but has not reduced their number... [asserting] 11,804 meetings and processions have had to be policed, over 7,000 of which were Fascist or anti-Fascist.'³⁰⁹ However, the Public Order Act did not eliminate anti-Semitic remarks at public meetings, the frequent assaults on Jews, or the vandalism of their property. Following the London County Council (LCC) elections of March 1937, the secretary of the Jewish People's Council, J Pearce, declared in a memorandum sent to the NCCL that the 'Public Order Act as can be seen from the violent anti-Jewish campaign had failed', and had suggested that agitation must now be focused on the demand for a Racial Incitement Bill.³¹⁰ The NCCL had recommended an amendment to s5 which would have provided that, 'any person who in any public place or at any public meeting uses words calculated to bring any racial or religious community into public hatred or contempt, would be guilty of an offence.'³¹¹

This agitation was the result of an increasingly violent BUF campaign in East London ahead of the LCC elections. Fascists in East London were reported to have smashed Jewish owned shop windows and chalked anti-Semitic propaganda on walls. The BUF polled 15,278 votes, which amounted to 18% of the poll. The JPC were concerned that their anti-Semitic propaganda could mobilise enough support to

³⁰⁹ Cmd. 5761, 'Report of the commissioner of police of the metropolis for the year 1937'.

³¹⁰ Hull History Centre (HHC), NCCL Collection, U DCL/8/6.

³¹¹ , HHC, U DCL/75/2, 'Repressive Tendencies in Recent Legislation in Great Britain', NCCL notes from International Conference held in Paris July 1937, on the curtailment of principles of liberty by recent legislation in certain democratic countries.

return a fascist candidate in the Borough Council elections in November 1937.³¹² During BUF public meetings, it was claimed that no attempt was made by the police to stop speakers from Jew-baiting, despite this being a clear violation of s5 Public Order Act. A transcript of the BUF's first public meeting following the LCC elections, held at Bethnal Green on 12 March 1937 illustrates the language used by fascist speakers. The first speaker addressed the need to keep on fighting against the Jewish interest, stating, 'We have given the Jews notice to quit and next we'll see the Jews clear out altogether.' BUF candidate, Raven Thomson claimed that the number of votes that the BUF received gave them a mandate for their policy based on anti-Semitism. He claimed that Mosley could then claim that he was not a fanatical anti-Semite, and that he was not speaking for himself but a significant section of the population. He continued his attack on the Jews by commenting,

Here's a British people today, to all intents and purposes lying in a ditch and lousy with Jews. (Police Constable and crowd laughed). The Jew can no more help being a parasite than a louse can be a louse... We can't altogether ignore the Jew... We will hold him up as a horrible example.³¹³

At this time the NCCL was collecting transcripts of fascist speeches and highlighted their perception of a pro-fascist police force which took little or no action against fascist speakers while arresting anti-fascist hecklers or Left wing speakers. An NCCL report entitled 'Disturbances in East London' from August 1937, quoted other fascist speakers as referring to Jews as, 'Hook-nosed, yellow-skinned, dirty Jewish swine' and 'Venereal-ridden vagrants'.³¹⁴ Again, no action was taken by the police in relation to these speeches. In a witness statement, collected by the NCCL in relation to police behaviour at a fascist meeting in Stepney Green on 14 July 1937, Alfred Levy described how he was chased by a man in plain clothes who said, 'Get away

³¹² Ibid.

³¹³ Ibid.

³¹⁴ HHC, U DCL/75/2, 'Disturbances in East London'.

you Jew bastard', and then he was caught and assaulted by several police officers who threw him into the back of a van. Levy claimed that he was stood at the back of the crowd talking to a friend when the incident took place. He stated that he was accused by the police of being a machine gunner.³¹⁵ When the police van started to move, he alleged that he heard someone in the van say, 'run these f ---- Jews down if they don't get out of the way.' Another statement by local resident Leonard Arundoli remarked that the crowd, measuring many hundreds, were hostile to the fascist speakers and 'indignant that these people should be allowed to come to Stepney Green and preach this racial hatred, protected by the police.'³¹⁶ The police later cleared the crowd with a baton charge under the orders of an unnamed Inspector, despite many witness statements collected by the NCCL which claimed that the crowd was orderly and that the police took an aggressive stance towards hecklers.³¹⁷

These allegations that the police used anti-Semitic language and laughed at a fascist's Jew-baiting at a public meeting raise worrying questions about partiality in the police force. At the higher levels of the police, the successive Metropolitan Police Commissioners, Trenchard and Game, were both outspoken in their desire to suppress the fascist movement. Yet, at street level, disturbing allegations highlight huge inconsistencies in police practice that support the assertion that many members of the police were pro-fascist, anti-Left and even anti-Semitic. However, these accusations must be seen against the wider picture of extreme political activity in Great Britain.

³¹⁵ This was a reference to the Spanish Civil War and Levy did not deny that he had fought in Spain.

³¹⁶ HHC, U DCL/75/2, 'Police Behaviour in Stepney Green'.

³¹⁷ Ibid.

In the Metropolitan Police district alone, there were over 7,000 fascist or anti-fascist meetings held in 1937.³¹⁸ In consideration of the large number of meetings held in the first year of the Public Order Act, events such as this with such strong accusations of police impropriety must be seen as isolated incidents rather than reflecting any normality in their practice. To substantiate this claim, consideration must also be given to how the police were also active in invoking their new legislative powers on BUF speakers in order to limit fascist provocation. Thus, selecting a wider range of sources has the potential to dispel notions of a prevalent police culture of political partiality in favour of the BUF which has been argued by Ewing and Gearty. When considering the nature of police discretion, and the necessarily subjective decisions they make, other factors in the decision making process are also influential, and, therefore, it is not always correct to assume that political partiality is the prime component. While it is important to recognise that some police officers did have fascist or anti-Semitic dispositions which was reflected in their failure to fulfil their duty impartially, this does not inevitably mean that all police action taken against anti-fascists or communists was politically motivated.

There were also arrests of fascist speakers following the Public Order Act offering some validation that police practice was inconsistent rather than politically motivated. Section 5 was a loosely defined provision which was open to wide discretion. The term 'threatening, abusive or insulting language or behaviour' is open to interpretation, but it is even more subjective to determine whether it may cause a breach of the peace or was even calculated to cause a breach of the peace.

Inspector James' report from a fascist meeting held on 23 June 1937, again in Bethnal Green, illustrates how the police operation was managed. James was

³¹⁸ Cmd. 5761, 'Report of the commissioner of police of the metropolis for the year 1937'.

present with one sergeant and ten constables who he positioned around the outskirts of the crowd. One constable was stationed near the platform next to a shorthand writer from Special Branch who was taking a transcript of the meeting. The constable could then relay information on any provocative language used to James, who roamed the back of the crowd assessing the possibility of a breach of the peace. James' report described the fascist speaker Earnest Clarke as 'not a very loud speaker' who usually relied on a loud speaker van to be heard. On this occasion, the Inspector claimed that it was difficult for him to distinctly hear what was said. James' report acknowledged the transcript taken by the shorthand writer, and he declared that he had heard some of what was said but stated that no action was taken against Clarke as the crowd was predominantly fascist sympathisers and were quiet and orderly throughout. He stated that there were no Jews present and no sign of a breach of the peace taking place, adding:

I am of the opinion that had an arrest been made at this meeting, the crowd would have undoubtedly have become disorderly and the police present would not have been sufficiently strong to have maintained order...[He continued to acknowledge a change in tactics since this incident] Since the recent Memorandum on Public Meetings was issued, I have occupied a stationary position alongside the Shorthand Writer, close to the Speakers platform, and all speakers before taking the platform have been cautioned by me against the use of insulting or provocative language.³¹⁹

The Sub-Divisional Inspector added his knowledge of the fascist speaker Clarke, stating that, 'when speaking, [he] closely watches the movements of the Inspector present at his meeting and, in the event of the inspector's attention being distracted from him, seizes the opportunity to attack the Jews.' The Superintendent's report claims that he had attended a large number of Clarke's meetings, and 'if a senior officer is present he invariably is informed and moderates his speech accordingly.'

³¹⁹ TNA, MEPO 2/3115 Bow Station, Report of Inspector James.

The reports demonstrate the difficulty faced when policing fascist meetings. Two days later, Clarke again spoke at Bethnal Green, and excited the fascist crowd with anti-Semitic remarks, who responded with shouts of 'Jewish scum' and 'Shonks'. Clarke moderated his speech when the Inspector began to approach him, but he later made more anti-Semitic references, and was then arrested by an Inspector and Sergeant Duncan. A rush was made towards the platform by the crowd, and Duncan drew his truncheon but did not need to use it. Clarke was taken in the police car and charged under s5. Following the arrest of Clarke, the meeting became disorderly and the fascist speaker could not regain order. The meeting was then closed on the request of the police. It was stated that 150 fascists made their way to the local communist meeting which created tension and, anticipating a breach of the peace, that meeting was also closed on the request of the police. Another fascist, Henry Burwood, was also arrested for using insulting words and behaviour.

Clarke was later convicted at Old Street Police Court with the evidence of Police Constable Templeman of Special Branch, who took the notes at the meeting on 23 June. In his judgment, the Magistrate, Herbert Metcalfe, declared, 'on this occasion you used language of the most gross, insulting, and disgraceful character, language which, from the very word 'go', was calculated to insult, not merely the people who were there, but other people.'³²⁰ This conviction was also to have implications for Inspector James who was present at the meeting on 23 June. In the defence's summing up it was claimed that the meeting 'was so orderly that the uniform police made no attempt to stop the meeting at any time.' The failure of James to take more appropriate action at the meeting was taken seriously by the Deputy Assistant Commissioner. James' report, which mistakenly stated that no inflammatory

³²⁰ TNA, MEPO/2/3115, Old Street Police Court, 10 July 1937.

language was used, was deemed by his superiors to have demonstrated neglect to his duty and he received an official caution. It is likely that James was also on duty at previous fascist meetings, and other speakers may have exploited his 'neglect'. However, James' report, and the tactics he employed at the fascist meeting in question, demonstrates that his priority was in preventing a disturbance that originated from the crowd rather than with what was said on the platform.

Following the passing of the Public Order Act, Sir Oswald Mosley suffered several disruptions at public meetings. At Liverpool on 10 October 1937, whilst addressing an estimated crowd of 8,000, Mosley was struck on the head by a large stone and was said to have been unconscious for between five to ten minutes. The newspaper reportage states that there was a mixture of boos and cheers for the fascist leader but the van and other fascists were hit by a 'shower of missiles thrown from all directions.'³²¹ In an earlier incident at Southampton, Mosley attempted to address a crowd of 20,000 on 18 July 1937. Again missiles were thrown at Mosley, but none to any effect. The noise generated by large sections of the crowd also made it impossible for Mosley's speech to be heard.

Two weeks after the Southampton meeting, Sir Oswald Mosley sought a deputation with the Home Secretary, Sir Samuel Hoare, regarding public meetings. Following the refusal by Hoare, Mosley conducted a series of letters to the Home Office to raise issues regarding the implementation of the Public Order Act by the Metropolitan Police and provincial police forces. Mosley's initial letter began by praising the Metropolitan Police declaring no one can deny that their arrangements for 'the preservation of order are admirable.'³²² He continued to express his view that

³²¹ *Western Daily Press*, 11 Oct 1937.

³²² TNA, MEPO 2/3116, Letter from Sir Oswald Mosley to the Home Secretary, 5 Aug 1937.

fascist speakers were arrested and charged immediately if they said anything provocative while people who attended their meetings and processions were permitted to say anything with the object of provoking a breach of the peace, yet action was only taken if they were guilty of physical violence. Despite suggesting that the law should be impartially used, Mosley, admitted that 'it is only fair to admit that order is now well maintained at outdoor meetings by the London Police.' However, in relation to the provincial police he claimed that the 'diversity of experience in different areas is extreme and varies on different occasions.' The Home Office attempted to promote 'even-handedness' in police practice when regulating politically extreme meetings, yet, Emsley highlighted that this definition also meant that Left wing speakers who were little trouble would have action taken against them because 'action had been taken against Blackshirts who were serious trouble.'³²³ Furthermore, Emsley stated that, 'Some senior provincial policemen ignored such directives and, with full support of their local police authority, acted against those whom they considered to be the trouble-makers.'³²⁴

In an example of provincial policing, Mosley recalled the Southampton meeting described above, and claimed that there were 25,000 members of the audience and only 24 police. From the outset, he claimed that 200 men were permitted to stand near the platform and prevent the rest of the crowd hearing the speech by constantly shouting and singing. He also accused the police of not taking action against crowd members who threw missiles, even when one police officer was stood beside a stone thrower. He claimed the man was only removed when he drew attention to him and the idle police officer next to him from the platform. Following the disorder at

³²³ Emsley, *The English Police*, p. 141.

³²⁴ *Ibid.*

Southampton, A K Chesterton's³²⁵ front page headline of the *Blackshirt* responded with the cry, 'ALLOW BLACKSHIRTS TO KEEP ORDER' and claimed that the police were 'less use than a sick headache.'³²⁶

With respect to the policing of their provincial meetings, Mosley suggested that, 'it is difficult for the present administration of the law to preserve even a pretence of impartiality.' He declared his amazement that there had not been any fatalities at their meetings and declared that if there were, then the Government would be morally guilty of murder as, through the Public Order Act, they had removed the right of the BUF to defend themselves.³²⁷ This is a reference to s2(1), which provides that:

If the members or adherents of any association of persons, whether incorporated or not, are--

(b) organised and trained or organised and equipped either for the purpose of enabling them to be employed for the use or display of physical force in promoting any political object, or in such manner as to arouse reasonable apprehension that they are organised and either trained or equipped for that purpose;

then any person who takes part in the control or management of the association, or in so organising or training as aforesaid any members or adherents thereof, shall be guilty of an offence under this section

This was a strange point to adopt, as even before the Act, Blackshirts who trained in the Fascist Defence Force could not legally maintain order in open spaces. This has always been the duty of the police and the mentioned provision was implemented to prohibit quasi-military organisations. The only exception to the police's duty to preserve order at public meetings is when they occur on private premises, where the responsibility is passed to the organisers. However, this controversial and easily abused authority is discussed in Chapter 4.

³²⁵ BUF Director of Publicity.

³²⁶ *Blackshirt*, no 221, 24 July 1937.

³²⁷ TNA, MEPO 2/3116, Letter from Sir Oswald Mosley to the Home Secretary, 5 Aug 1937.

In response, the reply from the Home Office made it clear that:

So far as the position in the Metropolitan Police District is concerned, the Commissioner of Police has issued definite instructions that the police are to take action in any case in which an offence under Section 5 of the Public Order Act is observed, whether the offender is a speaker at a meeting or a member of the audience.³²⁸

It was pointed out that there had been 27 arrests in the Metropolitan Police District at BUF meetings between 1 January 1937 and 31 July 1937. 15 of these were anti-fascists, while only four were fascist speakers and two were fascists from the crowd; the political persuasion of the other six was unknown. With regard to the provincial Chief Police Officers, A I Tudor Esq, on behalf of the Home Secretary, stated that:

It is not... legitimate criticism... to suggest that the law is not administered impartially because on occasions, in spite of police arrangements, perfect order is not preserved and some stone throwing or assaults take place and some of the offenders escape detection.

The most significant remark, in the response to Mosley, was the admission that it was 'no part of the duty of the police to secure a hearing for speakers at meetings'. This adds considerable confusion to the provisions under s6 POA which amended the Public Meeting Act 1908. Under this amendment, the police now had the power to arrest a person, on the direction of the Chairman at a lawful public meeting, whether on private premises or in a public space. This could be implemented if they were acting in a 'disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together, or incites others so to act' and they failed to give their name and address to a police officer. To what extent would someone have to be acting in a disorderly manner to be deemed to be attempting to prevent the transaction of business of the meeting? Why was anti-fascist singing so frequently permitted when the obvious intention of it was to drown

³²⁸ TNA, MEPO 2/3116, Letter from the Home Office to Oswald Mosley, 18 Aug 1937.

out the voice of the fascist speaker? The discretion available to the police in preserving order, despite its intrinsic faults which lead to inconsistency and alleged partiality, is the ability to adapt to individual situations. Correspondence between the Home Office and the Metropolitan Police in discussing the reply to Mosley highlight that the police could only act if they were instructed by the chairman, and even if names were taken of interrupters, it was 'not necessarily the duty of the police to institute proceedings for a breach of the Act of 1908'.

An important feature of Mosley's letter was the question of how the police would respond if it were fascists interrupting the meetings of Conservatives or Socialists by openly inciting violence in their propaganda and transporting men long distances to make it happen. The question, which was raised twice by Mosley, could have been seen as being threatening, yet, the conclusion of his letter reaffirmed his desire to avoid a breakdown of law and order stating that he was, 'ready at any time to co-operate with the police to avert it.'³²⁹

There was also significant autocratic police action taken against the BUF in Devon. Following the decline in BUF membership in Plymouth and the subsequent closure of the Plymouth branch in 1934, efforts were made to rekindle fascism in Exeter. By 1937, public meetings were beginning to attract larger crowds and anti-fascists began to oppose them. Prospective Parliamentary Candidate Rafe Temple-Cotton and County Propaganda Officer Captain Hammond were prominent speakers. Chief Inspector, Albert Rowsell, reported that fascist activity during 1937 grew but it was not till October that year that police observed disorder. His report also acknowledged an incident on 16 October which suggested that the crowd took a particular dislike to Hammond, and had the police not been there and had 'Hammond continued to

³²⁹ TNA, MEPO 2/3116, Letter from Sir Oswald Mosley to the Home Secretary, 5 Aug 1937.

address the crowd, injury to person and property would have resulted.³³⁰ On this occasion the police requested that Hammond close the meeting as they anticipated serious disorder. Hammond obeyed the request and the fascists were shepherded back to their headquarters by the police. Again, this example demonstrates that the fascists' liberty to speak publically was also compromised by police interference. Yet, it also reveals that the fascist speaker did not challenge the police request. The use of police resources to accompany the fascists back to their headquarters was an important precaution to prevent any disorder and, therefore, does not necessarily demonstrate police collusion or partiality. Furthermore, fascist activism was further restricted by the police as, when they were dispersing the crowd, they stopped Temple-Cotton from distributing fascist leaflets. This illustrates that a significant number from the crowd were receptive to the fascist message by accepting the BUF propaganda. Yet, police discretion was used to prevent fascist activism rather than enforce the law against those members of the crowd who threatened the peace in order to prevent it.

Following this, Exeter's Chief Constable, Frederick Tarry, prohibited Hammond from addressing any further meetings except in the open space known as the Triangle. This banning order commenced on 19 October 1937. Reports of Exeter meetings in *Blackshirt* state that Hammond spoke at the Triangle while Temple-Cotton addressed meetings in other areas, and there is no evidence to suggest that the Exeter fascists broke Tarry's prohibition. This very wide interpretation of the police officer's duty to prevent a breach of the peace is highly questionable. In his analysis of this incident, local historian Todd Gray revealed that the Home Office doubted the legality of the police's use of preventative measures citing,

³³⁰ TNA, HO 144/21064. Disturbances: British Union of Fascists: Activities

It certainly seems as though the Chief Constable has overstepped the mark in failing to recognise that, because an individual has used provocative language or conduct on one occasion (apparently not sufficiently serious to warrant a prosecution under Section 5 of Public Order Act) he is not on that account justified in banning that individual from public speaking.³³¹

This incident reveals that while the Home Office recognised that the legality of the preventive powers used by the Chief Constable were highly doubtful, they did not attempt to hold him to account for these actions. Furthermore, this action was not legally challenged or disobeyed by the BUF.

These examples of disorder at fascist meetings after the Public Order Act reveal several inconsistencies within police practice. Firstly, there is a divide in the policing of fascist activism between some provincial forces and the Metropolitan Police. This difference was even highlighted by Mosley, who argued that the BUF was politically discriminated against by some provincial forces. Secondly, there was also a notable divide in the actions and attitudes of the senior police officers with their subordinates. For example, Inspector James was cautioned for failing to act when fascist speakers had used insulting words, and those of the lower level officers who seemingly prioritised crowd control over the monitoring of provocative political speeches. Although this may have been influenced by the anti-Semitic attitude of some officers, it must also be considered that in practice, it was more difficult to attain a conviction of an anti-Semitic speaker than it was of a protester that caused, or threatened to cause a disturbance at a meeting. Furthermore, accusations against the police of anti-Semitic and pro-fascist behaviour were also prominent in East London during the BUF's LCC campaign. These instances demonstrate that police officers were not immune from the popular prejudice towards Jews in this period and it also effected

³³¹ Gray, *Blackshirts in Devon*, p. 177. Citing HO 144/21064.

how some of them performed their duty.³³² While s5 was a provision that was utilised against both the speaker and the heckler at public meetings, wide discretion was still available in deciding whether the words used were threatening, abusive or insulting and if they were conducive to a breach of the peace. This ambiguity continued in the post war era and the use of police discretion at fascist meetings was again questioned.

9) Policing Public Meetings after the Second World War

In the post war era, fascist activism continued and the same debates about police action disproportionately demonstrating pro-fascist partiality at public meetings continued. Historian David Renton led the most critical condemnation on police action during the 1945-51 period. He contended that the police arrested more anti-fascists than fascists, protected fascist meetings and acted in collusion with the fascists.³³³ Yet, these arguments fail to acknowledge other factors which had been discussed above. For example, to claim that the imbalance in the number of arrests made demonstrates partiality is ultimately inaccurate as it fails to take into account the behaviour of individual activists, the limitations of the legislation and other factors which influence police discretion. Also, his assessment of police protection and collusion is hindered by not recognising that as the Union Movement were not proscribed and were at liberty to hold public meetings, it became the duty of the police maintain order at them. In addition, it was the responsibility of the meeting organisers to communicate information with the police which included the proposed length of the meeting, projected numbers, and whether it was known if any

³³² Emsley, *The Great British Bobby*, p. 219.

³³³ D. Renton, *Fascism, Anti-Fascism and Britain in the 1940s*, Macmillan Press Ltd (2000), Chapter 4.

opposition was expected. Therefore, such communication does not necessarily constitute acting in 'collusion' with the fascists.

Intriguingly, Renton contends that there were three ways the police could have acted in this era: positively, to close down the fascist meeting; negatively, intervening with the fascists against the anti-fascists; or neutrally, choosing between the fascists and anti-fascists, and always upholding the law.³³⁴ His argument contends that the police acted in the second option. This argument suggests that the police are a monolith and his claim omits any incidents of police action against the fascists. Furthermore, there is little legal debate on why police action may have more frequently targeted anti-fascists rather than fascists. Yet, more importantly, the third option for police conduct in this period that they acted neutrally is not explored in any great detail because it makes the assumption that the law is absolute. For example, as the discussion on police discretion above has demonstrated, police officers are provided with wide legal powers to uphold the law and are presented with varying options of action which all may fall within legal boundaries. Therefore, the option to 'always uphold the law' is inherently multifaceted; police officers are inevitably required to use their discretion in order to prioritise what laws to uphold and how to enforce them.

Despite the defeat of Nazi Germany and the revelations of the Holocaust, anti-Semitic feeling remained high in Great Britain. In August 1947 there was a weekend of anti-Semitic riots in Manchester, Liverpool and Glasgow, and disorder in Bristol, Hull, London and Birkenhead. Throughout the country there was also individual attacks Jewish property. The resurrection of anti-Semitism, just two years after the War, was kindled by the *Daily Express* front page story of the murder of two British soldiers in Mandate Palestine. Although this article may have provided the spark,

³³⁴ Ibid., p. 104.

journalist and analyst of far-Right movements Daniel Trilling has highlighted how anti-Semitism festered within British society after the War, even though fascist activism had practically diminished. In addition to the Jewish terrorist violence in Palestine, he highlighted that during the years of austerity, the myth of the Jewish black-marketeer and fuel hoarder was kept alive, and soaring unemployment (which reached 1.9 million in 1947) had led to animosity towards Jews and foreigners over claims that they 'were getting jobs.'³³⁵ The far-Right quickly capitalised on this wave of denigration towards the Jews and fascist activism was revitalised. Former BUF member Jeffrey Hamm capitalised and his public meetings for the British League of Ex-Servicemen and Women were given renewed impetus. Also, in November 1947 Mosley held the inaugural meeting for Union Movement. Renewed fascist activism also led to the revival of anti-fascism and groups, such as the 43 Group, who emerged to challenge the far-Right crusade and physically disrupt their meetings.

A police presence at fascist meetings was a necessity in order to keep the peace. However, an analysis of fascist meetings in this period demonstrates the vagueness of s5 Public Order Act 1936. While the first component stated that it was an offence to use threatening, abusive or insulting words or behaviour, the second part of the section required that it must be proved that the speaker intended to provoke a breach of the peace, or that a breach of the peace was likely to be occasioned. It is this caveat that hindered the prosecution of many fascist speakers. However, there were some successful prosecutions. For instance, Hamm was charged for using insulting words which were likely to cause a breach of the peace for speeches that he delivered on 14 and 21 September 1947 in Dalston, North-East London. The

³³⁵ D. Trilling, 'The Lost Weekend', *The New Statesman*, 28 May 2012, p. 33. Trilling interviewed former Jewish refugee and Communist Party councillor Max Levitas who recalled the general atmosphere of the time.

charge relating to the speech on 21 September was dismissed, and the magistrate, Blake Odgers stated that he 'was perfectly entitled at any political meeting to [verbally] attack any other political meeting... [and continued that it] was inoffensive inasmuch as he was not attacking Jews as Jews.' This was in relation to Hamm's criticism of communists and the use of the term 'oriental rabble'. Yet, Odgers ruled that Hamm had exceeded the legal boundaries when he used the words 'Pale, pink, palpitating pansies' which was phraseology which was likely to cause a breach of the peace.³³⁶ This demonstrates the breath of discretion utilised by magistrates in interpreting which actions were lawful or unlawful under s5. Hamm was bound over in the sum of £25 for 12 months.

Former BUF activist Tommy Moran, mentioned above following his arrest in Plymouth in 1934, was also charged with using threatening behaviour at Derby in 1948. Moran, who was addressing a crowd at the Market Place, responded to a shout from the crowd of 'Let's smash the Jews up', by jumping off his platform and running towards a rival meeting. After being charged with threatening behaviour, Moran replied to the police officer, 'I did more than threaten. I hit a Jew. I tried to stop a meeting of the Stern Gang and whatever happens to me I shall always do my best to stop them.'³³⁷ Moran was fined £5. His reference to the Stern Gang directly related to the violence in Palestine. Founded in 1940 by Avraham Stern, the Stern Gang was a Zionist extremist group who were responsible for terrorist attacks on British personnel in Palestine. Although there was relatively little activity in the UK, the

³³⁶ *Gloucestershire Echo*, 18 Oct 1947.

³³⁷ *Derby Daily Telegraph*, 10 May 1948.

association of Jews with the terrorist group was a valuable propaganda tool for the far-Right.³³⁸

Despite the convictions of Moran and Hamm, the magistrates in each case only gave relatively light sentences. One of the charges against Hamm was even dropped and the magistrate stressed that the liberty to attack rival political parties or the Government existed, although his judgment that Hamm's references to Jews were inoffensive as he was not attacking 'Jews as Jews' is more remarkable. In the magistrate's judgement, this was not offensive yet the crowd and the police who were present at the meeting interpreted his words as anti-Semitic. The difficulties in securing a prosecution against an anti-Semitic speaker was not just to prove that the words used were offensive, but were either calculated or likely to provoke a breach of the peace. Even in cases where disorder does occur, the police and the magistrates have the discretion to decide whether any subsequent disorder was the direct result of the speech or not. For instance, a political opponent might well attack a fascist meeting despite what was being said, and so the magistrate and the police must use their discretion appropriately to judge if the speaker was responsible for the disorder.

In the two incidents above, the police acted against the Hamm and Moran for different reasons. In Hamm's case, the police reported that during the speech on the 21 September, 'the crowd were whipped up into a complete frenzy'. Therefore, the large scale animosity towards the meeting which appeared to naturally manifest from

³³⁸ Even newspaper reports of the Stern Gang's acts of violence did little to differentiate between Jews and the extremist organisation. For example, on 26 Sept 1947, the *Gloucester Citizen* reported a bank raid by the Stern Gang in Tel Aviv with the headline, 'JEWS KILL FOUR BRITONS' The attack was carried out as British police transferred money from Barclay's Bank to an armoured car. Other contemporary newspaper reports also associate Jews with terrorism. For example, 'JEW TERROR THREATS: BRITAIN'S CLEAR WARNING' *Western Daily Press*, 16 Dec 1946, 'JEWS KILL MORE SOLDIERS', *Aberdeen Journal*, 9 Oct 1946, 'TROOPS READY FOR ANY LONDON JEW TERRORISM', *Hull Daily Mail*, 11 Nov 1946.

Hamm's speech aided the police in directing their action at him rather than the potentially violent crowd. In Moran's case, his use of threatening behaviour by running towards a rival meeting and claiming to have punched a man also compelled the decision to make an arrest. The difficulty that faced the authorities in controlling fascist meetings was when a decision was not so clear cut. The difficulty to secure a prosecution in less translucent incidents forced the police to take less affirmative action when faced with anti-Semitic propaganda. In addition, Renton suggested that a positive use of police power would have been to close fascist meetings. Yet, to take such autocratic action in anticipation of anti-fascist retaliation would set a dangerous precedent that would ultimately deny the liberty of free speech to those who had opponents who were prepared to use violence against them. Although the doctrine of the far-Right is repugnant and antagonistic, the use of oppositional political violence should not be tolerated because of its potentially commendable ethical status. The violence and disruptive tactics of many of the anti-fascists necessarily warranted police intervention.

On 7 March 1948, a Union Movement meeting at Dalston Road was attacked by several anti-fascists. The police action used here and the proceedings at the Central Criminal Court demonstrate the problems faced by the legal authorities of organised political disruption. The police reports state that while the meeting was in progress, 30-40 Jews arrived in groups of eight to ten and were directed to strategic points by anti-fascist activist Gerald Jacobs.³³⁹ In response to the anticipation of disorder, police reserves were requested but before they arrived, 'there was a sudden rush

³³⁹ Jacobs was known by the police officers of G Division, and it was noted that 'he generally appears to assert some authority... [over] the Jewish people who form the opposition'. He was also previously convicted for insulting behaviour at a British League meeting for throwing a tomato at the speaker. He was fined £5. MEPO 3/3093/8C, 'Charges arising from disorder at public meetings'. The police report's use of the term 'Jew' rather than 'anti-fascist' here is more reflective of the period's deficiency of etiquette regarding political correctness, rather than any stereotyping or discrimination of their subject.

forward by the Jews, shouting, “Down with Fascism”, “smash them up now”. They attacked every person who offered the slightest resistance, surged forward and upset the platform.³⁴⁰ Eight arrests were made and the police ordered the fascist speaker, Alexander Raven-Thomson not to proceed with the meeting after they had re-erected the platform as they anticipated that more disorder would occur. He accepted the order but some supporters of the Union Movement went to the nearby Commonwealth Party meeting and chanted, ‘we want free speech’ and ‘break up this meeting as well as ours’. Anticipating further disorder, the police also instructed the speaker to close the meeting, which he did reluctantly. A further two arrests were made which included the arrest of Margaret Hutchings of Union Movement for insulting words after she was heard by a police officer shouting, ‘Dirty Jew Bastards. They smashed our meeting’. The police believed that the organised attack on the Union Movement meeting was organised by the 43 Group. This is very possible; Renton claimed that in the previous year the 43 Group had disrupted ‘hundreds’ of fascist meetings. It was only from the Autumn of 1947 when the attendance at fascist meetings had risen to up to 3,000 that the disruptive tactics of the 100-200 ‘commandos’ of the 43 Group became ineffective. Despite the violence and unlawful tactics of the 43 Group, Renton describes their actions as ‘heroic activities’ and even ponders on why more anti-fascists were arrested in this period than fascists.³⁴¹

Seven of the anti-fascists were indicted for unlawfully assembly for conspiring to commit a breach of the peace. Four of whom, also faced additional charges of assaulting a police officer. Two of the defendants were found not guilty by the jury for the charges relating to unlawful assembly, and there was also an acquittal for two of

³⁴⁰ MEPO 3/3093/5A, ‘Meetings – Resulting in disorder and arrest’

³⁴¹ Renton, *Fascism, Anti-Fascism and Britain in the 1940s*, p. 136-7 and Table 4.2 ‘Arrests, April 1946-December 1947’, p. 110.

the assault charges. Jacobs fine of £20 was the largest punishment of the five who were found guilty. The others were given fines which ranged from £3 to £7. Following the sentencing of the defendants, the Recorder of London Sir Gerald Dodson, warned them not to take the law into their own hands and stated,

You must realise that Police Officers are not your natural foes, they are your friends and provided you behave like reasonable people they will help you... [adding] You may not like fascists, whatever they may be, or their meetings, but leave the law to look after them.³⁴²

Dodson also warned the defendants that although his sentences were light this time, should this should happen again, they would 'undoubtedly' go to prison. The police report also reflected that, although the sentences were considered to be 'comparatively small', the effect of a higher level prosecution at the Central Criminal Court on indictment, rather than the normal practice of being heard by the magistrates had the positive effect. The report, which was written on 14 May, stated that since 7 March there was no disorder at public meetings in the Ridley Road area except when Mosley made his first open air appearance on 1 May, which was regarded as being quite different from the usual meetings held there.³⁴³

These incidents demonstrate the continuing public order problems faced by the police regarding free speech at far-Right meetings. These examples show how the use of police discretion was used to respond to the origin of the disorder. However, other examples are more opaque. Kenneth Younger, the Under-secretary of State for the Home Department addressed the difficulty of securing a prosecution against fascist speakers using s5.

³⁴² MEPO 3/3093/8A, 'Union Movement Meeting, John Campbell Road, 7.3.48'.

³⁴³ Ibid.

I think the House would agree that nothing would do more harm than for the police to bring prosecutions which frequently fail. Indeed they have had some rather unhappy experiences where they have thought a particular sentence or passage in a speech might fall within the mischief of that Section, where they have prosecuted, and where the prosecution has failed, and where on numerous subsequent occasions the same speaker has used those sentences over and over again, adding that the courts had already said that it was quite all right.³⁴⁴

This highlights the difficulty of applying discretion to act against a speaker who uses insulting words. The police officers present would also need to prove that a breach of the peace was either intended or likely. As many of the fascist speeches were directed at the character of the Jews in general, rather than any deliberate direction to the crowd to create disorder, a prosecution on the grounds that the speaker intended to create a breach of the peace was unlikely. Therefore, the offence more likely to secure a prosecution was on the basis that a breach of the peace was likely to be occasioned. This provision relied, somewhat tentatively, on the reaction and behaviour of the crowd. However, even in cases such as the Hamm meeting on 21 September 1947 mentioned above where the police witness declared that 'the crowd were whipped up into a complete frenzy' by the fascist speaker, the magistrate had dismissed the charge.

The challenge of enforcing s5 at public meetings created the detrimental police task of adjudicating what is permitted or prohibited from a political platform. The wide discretion available under this provision, as well as the uncertainty of judicial interpretation when deciding whether to initiate a prosecution, led to inconsistent police action. That is not to say that some policing was not politically sympathetic as some police officers would have undoubtedly identified with the views of far-Right speakers, but it would be dangerous to conceive that all policing which seemingly favoured fascist activism was politically motivated. How police officers utilise their

³⁴⁴ *HC Deb*, 7 Dec 1949 vol 470 cc2050.

discretion may include various other factors. William Ker Muir Jr identified four different categories of police officer in a study which identified that the paradoxes of coercive power determine how differently police officers react to the psychological side of their role.³⁴⁵ Within this typology it is possible to project different reasons for an apparently pro-fascist response to politically extreme meetings which provide alternative explanations to political motivation.

The first category Muir identified were 'Enforcers' who fight an 'us against them battle'. This is the category where police officers were more likely to act in a politically partisan way, considering that the far-Left regularly pitted themselves against authoritative powers such as the police, while the far-Right (especially under Mosley) aligned themselves with law and order. Additionally, Robert Reiner has also highlighted that police officers are more likely to be aligned to the political Right, as a result of the nature of the job, the routine clients from the bottom layer of the social order, and the disciplined, hierarchical structure of the force.³⁴⁶ Considering Muir's notion of the corruptive influence of coercive power then this potentially suggests that police officers that fall within the 'Enforcers' category, are more likely to use their power to support the far-Right speaker than the anti-fascist or Jew. Yet, a consideration of the other categories of the police as 'streetcorner politicians' may also produce similar outcomes with different motivations. For example, 'Avoiders', who evade responsibility and therefore fail to exercise their authority, would also potentially allow the offensive speeches of far-Right speakers in order to avoid the necessary confrontation in enforcing the law. Typically, 'Reciprocators', who enforce their authority with negotiated accommodation, may have demonstrated their power by warning speakers when they believe that the speech was becoming potentially

³⁴⁵ W. K. Muir Jr., *Police: Streetcorner Politicians*, The University of Chicago Press (1977).

³⁴⁶ Reiner, *Politics*, p. 121-124.

unlawful. This form of 'negotiation' was a frequent occurrence at far-Right meetings which Renton criticised as demonstrating police collusion.³⁴⁷ Even, those within the category of the 'good policeman', who is not corrupted by power but exercises it with morality and empathy, may still allow a fascist meeting to continue, despite their own disapproval of the speech, knowing that a successful prosecution would still be unlikely. These possible responses, using Muir's different police categories, demonstrate other explanations of police action, other than the politically partial pro-fascist police officer.

Academic lawyer Harry Street also questions the extent that pro-active police action at fascist meetings would have been desirable. He contended that those who promote unpopular causes which may excite heckling by exaggerating, distorting and vilifying should still receive police protection. Street suggested that any alternative would ultimately see the police as 'the new censors of speech' and the opponents of unpopular causes, such as anti-fascists, would be free to use violence to break up political meetings and subsequently prevent freedom of expression.³⁴⁸ As an offence under s5 can only be committed if the words or behaviour used was likely to result in a breach of the peace, it must be accepted that anti-Semitic speeches delivered to a completely pro-fascist audience would not lead to disorder. In addition, if an anti-fascist purposely attended and caused disorder at a fascist meeting, the motives of that person must also be questioned in order to determine if a s5 offence had been committed. Did he attend the meeting with the intention of causing disorder? Was his disruption the result of the speech, or his prior dislike of the fascist doctrine? These were important questions which dictated the action of the

³⁴⁷ Renton, *Fascism*, p. 111.

³⁴⁸ Street, *Freedom*, p. 51.

police and the judiciary. Yet, a landmark judgment in 1963 provided new directions at common law on how to treat disruptions at public meetings.

On 1 July 1962, Colin Jordan of the National Socialist Movement delivered a particularly odious speech to a crowd of 5,000 at Trafalgar Square. In his speech he praised Adolf Hitler and suggested that Great Britain fought the war against the wrong side, submitting that we should have joined Hitler in a war against the Jew. There was a surge towards the platform and amidst the scenes of disorder the police closed the meeting and arrested the speaker under s5. The justice's convicted the defendant who subsequently appealed to the Quarter Sessions. His appeal was allowed on the grounds that, although the words were insulting, they 'were not likely to lead ordinary, reasonable persons, attending the meeting in Trafalgar Square, to commit breaches of the peace by committing assaults'.³⁴⁹ This indicates the wideness of the provision without any leading common law judgment and the discretion available within the courts in interpreting the meaning of the provision. On appeal at the Queen's Bench Divisional Court, Lord Parker CJ ruled that the speaker must take their audience, 'as he finds them'. For instance, in referring to Jordan's provocative and insulting remarks to the political Left who were present in the audience, Parker judged that those words 'were intended to be and were deliberately insulting to that body of persons' constituting an offence by itself. On the extent of free speech which is to be allowed, Parker stated:

A man is entitled to express his own views as strongly as he likes, to criticise his opponents, to say disagreeable things about his opponents and about their policies, and to do anything of that sort. But what he must not do is - and these are the words of the section - he must not threaten, he must not be abusive and he must not insult them, "insult" in the sense of "hit by words."³⁵⁰

³⁴⁹ *Jordan v Burgoyne* [1963] 2 QB 744 at 746.

³⁵⁰ *Ibid.* at 749.

The importance of this case was that it was explicitly ruled that a speaker who used words which threatened, abused or insulted, had to take his audience as he found it and, if the words spoken to that audience were likely to provoke a breach of the peace, he was guilty of an offence.

10) Conclusion

Police responses to the public meetings before and after the Public Order Act 1936 varied significantly. Tactics applied were seen to have either focused on disorder coming from elements within the crowd, or of the speakers themselves. It has been suggested that the application of this strategy predominantly focused on anti-fascist protesters at fascist meetings, and the speakers at communist or anti-fascist meetings. Yet, a wider look at further events and the methods employed by both the far-Right and the far-Left in relation to existing law indicates that other pertinent reasons enlighten this debate. The BUF largely remained a movement that advocated lawful and constitutional methods of gaining power. Examples of fascist speakers being compliant with requests to close or move meetings would have certainly helped their relationship with members of the police. In contrast, examples of extremists of the Left, who regularly resisted police authority and advocated unconstitutional methods in their propaganda, naturally antagonised conflict.

Whilst much of this activism can be morally vindicated for its anti-fascist stance, patronage for the hungry and unemployed, and its support for the protection of civil liberties, the scepticism that existed within the Home Office and the police of revolutionary communist motivations must also be considered as important factors that influenced the use of their discretion. In contrast, the BUF's respect of police authority and their cooperation with them during their demonstrations gave the police

fewer opportunities or motivations to use force against them. The paradox is that the unethical policies BUF and other fascist movements have the power to provoke disorder whilst conducting it in a largely lawful manner. Unlawful activities, such as the attacks on Jews and Jewish property were committed more covertly and although these acts may have been committed by members of fascist movements or inspired by them, they were usually committed independently of the movement's official activism.

Despite the contrasting political methods, and different relationships each group invariably had with police officers on the spot, the enforcement of the law was still inconsistently applied. Following the intensified use of anti-Semitism in the BUF's political propaganda and the enactment of the Public Order Act, there is increased evidence to suggest that fascist speakers were also becoming more targeted by police responses. The neglect of Inspector James, who failed to act upon anti-Semitic remarks made at the fascist meeting, and his consequent caution, demonstrates how serious a view the higher levels of the police took of Jew-baiting. The change in James' tactics, to situate himself in hearing distance of the speaker, (an order issued to all senior officers) also identifies a shift in the focus of policing public meetings. James' view that it would be wrong to arrest a fascist speaker at a peaceful meeting, because it would potentially create disorder amongst the audience also became redundant. This was witnessed by the arrest of Earnest Clarke and the subsequent closure of the BUF meeting at Bethnal Green. However, s5 still required the prosecution to prove that a speaker had either intended to provoke a breach of the peace or that a breach of the peace was likely to be occasioned. The police also had to be aware of the astute tactics employed by the fascists, who took advantage of any distraction of the police officer to use provocative words. In provincial areas

too, questionable preventive measures which were applied to Captain Hammond at Exeter, prohibiting him from addressing crowds except at one specific point is a further example of how fascist speakers were also oppressed. It is interesting to note though, that in this instance, Hammond did not break the Chief Constable's instruction to refute its legality, as had been done in *Duncan v Jones*. It is also evident that both the BUF and the anti-fascist and far-Left groups claimed that police action was partial in favour of their opponents.

This chapter has demonstrated that there was no linear progression or regression of the status of free speech across this period although it was regularly claimed as a 'right' by different activists. The Trafalgar Square riots of the 1880s even led to attempts to give the right of free speech and assembly positive legal status within constitutional law. Even the Public Order Act 1936 did not clarify to what extent free speech was attainable as the provision under s5 only provided an ambiguous definition of what words and behaviour was criminalised. The difficulty in securing a conviction of fascist speakers in the 1930s and 1940s based on this provision has been highlighted above. Ewing and Gearty's assessment of the policing of interwar fascism and Renton's analysis of the policing of the far-Right after the Second World War both neglect important factors. For instance, there is an assumption on both their parts that any police action against the far-Right was just and correct, while police action that targeted either the far-Left or the anti-fascists was unjust and politically motivated. This chapter has demonstrated that the use of police discretion influenced a wide range of inconsistent responses which have both favoured and hindered fascist activism.

Chapter 4

‘Blackshirt Brutality’ and the Role of the Steward: Public Meetings held on Private Premises

You will find that interruptions at Fascist meetings do not last long.³⁵¹

1) Introduction

Police responses to disorder at public meetings held on private premises have had a contentious and inconsistent history. This has a significant position in public order law as, contrary to the majority of public order policing which is concerned with preserving the peace in public places,³⁵² an ambiguous legal debate on the role of the police during disorder at public meetings held on private premises still endures. For the benefit of this chapter, all further references to public meetings will denote those which are held on private premises unless otherwise stated.

This chapter contextualises the substantive law and analyses criticisms of partiality within police practice by comparing the police responses at a range of political meetings. By utilising legislation, case law, Parliamentary discussion, Home Office correspondence and political publications, these legal responses are critically evaluated and their influence on the current legal debate is analysed. Arguments in the existing historiography that political motivation accounts for the variation in police practice are challenged, and it is argued that the application of a historico-legal lens adds an important balance to the understanding of police tactics and the use of their

³⁵¹ Sir Oswald Mosley, *Leicester Evening Mail*, 15 April 1935.

³⁵² S9 Public Order Act 1936 defines public place as, ‘any highway... and any other premises or place to which at the material time the public have or are permitted to have access, whether on payment or otherwise’.

discretion. The development of police practice on the occasion of public meetings is examined from the start of the twentieth century, when prominent politicians such as Sir Edward Grey in 1905, and Lloyd George in 1908, were victim to suffragette militancy and organised interruption. Prominence is given to the interwar years, especially the controversial and inconsistent use of police discretion when dealing with the BUF's rally at Olympia and the International Labour Defence Organisation's meeting in South Wales, which came to prominence in *Thomas v Sawkins*. Ewing and Gearty have advocated that the difference in police practice here is a clear demonstration of political partisanship which favoured fascist activism. They regarded the Olympia meeting as 'one of the most dramatic occasions of the inter-war period' and argued that when policing Right wing groups, 'the police were invariably able to rediscover a nineteenth century style of dedication to political liberty and free speech' that was absent in respect to Left wing groups.³⁵³ The following debate in this chapter importantly differentiates the dynamics between these two meetings and suggests that the difference in police responses were influenced by other elements than political motivation. Other interwar meetings held by the BUF and the far-Left are analysed, as well as the allegedly brutal stewarding by Conservative stewards and Winter Garden staff at the 1958 conference at Blackpool and the resulting court cases. By placing the Blackshirt stewarding of the 1930s within this wider historical context, it is suggested that, although provincial police practice did differ, there is more consistency within the legal responses to disorder held on private premises than may have originally been thought.

2) Legal Definitions

³⁵³ Ewing and Gearty, *The Struggle*, p. 275.

The current legal definition of 'public meeting', found in s9 Public Order Act 1936, is examined in Chapter 3. A further meaning which is more applicable to meetings held on private premises, but has since been repealed by the Defamation Act 1952, is found in s4 Law of Libel Amendment Act 1888. Public meeting is defined here as, 'any meeting bona fide and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted.' This provision was mandated to privilege newspapers with the authority to report the minutes of meetings, including those of 'a vestry, town council, school board, board of guardians, board or local authority form or constituted under the provisions of any Act of Parliament... [and print] at the request of any Government office or department, officer of state, commissioner of police, or Chief Constable of any notice or report issued by them for the information of the public', provided that it is not published with malicious intent, or with blasphemous or indecent matter. Although not legally bound by statute, a similar definition was offered to the Report of the Departmental Committee on the Duties of the Police with respect to the Preservation of Order at Public Meetings in 1909 by the Chief Constable of Liverpool, Leonard Dunning:

[A] public meeting may properly be defined to include any lawful meeting called for the furtherance or discussion of a matter of public concern, to which the public or any particular section of the public is invited or admitted, whether the admission thereto is general or restricted.

Dunning described this definition as 'an instruction to the police put in a language they are likely to understand'.³⁵⁴

³⁵⁴ Cd. 4674, 'Report of the Departmental Committee on the Duties of the Police with respect to the Preservation of Order at Public Meetings' (1909), para 526.

The legal definition of 'private premises' is more problematic. The Departmental Committee of 1909 clarified that, 'If a public building is hired, or even lent, to an association or other section of the public for the purposes of a meeting, it becomes in law for the time being a non-public place.'³⁵⁵ S9 Public Order Act 1936 defines private premises as, 'premises to which the public have access (whether on payment or otherwise) only by permission of the owner, occupier, or lessee of the premises.' The implication of this distinction means that persons in attendance of a meeting on private premises are only present by the invitation of the organisers, meaning that if they refuse to leave when requested, they become trespassers. This entitles the organisers, or stewards acting on their behalf, to eject, without undue violence, any person who refuses to leave. Until the controversial judgment in *Thomas v Sawkins*,³⁵⁶ it was widely understood that the police also required the invitation of the organisers to enter the premises if their assistance was required. Yet events have frequently developed that have compelled the police to take assertive action and enter private premises to either restore order or to prevent disorder.

As the law currently stands, the organisers of public meetings are entitled to refuse entry to the police, but this entitlement is subject to the police officer's power and duty to preserve the peace. A police officer can enter private premises to either prevent or deal with a breach of the peace, or to pursue a criminal. If no legal justification can be offered for the police officer's entry and the officer subsequently refuses to leave when requested by the organisers, then the police officer becomes a trespasser and ceases to be in the execution of their duty. The ambiguity of the law relating to public meetings and the importance of considering the individual facts of

³⁵⁵ Cd 4673 Report of the Departmental Committee on the Duties of the Police with respect to the Preservation of Order at Public Meetings. Volume 1: Report and Appendices, (1909) p. 5.

³⁵⁶ [1935] 2 KB 249.

each case is highlighted by Peter Thornton QC who stated, 'The police might argue, for example, that a meeting convened to protest against the passage of a Race Relations Bill might permit their attendance if held in Bradford, but not if held in Devon.'³⁵⁷ The availability of wide discretionary powers, although potentially justified on the reasonable apprehension of disorder, demonstrates the available scope of police practice and possible perceptions of partiality which raises several questions. When a breach of the peace is only anticipated, what justification can validate the intrusive use of preventative police tactics? On the occasion of a suspected breach of the peace, at what point should the police enter the premises to restore order, and how can a breach of the peace in this case be defined?

3) Pre-War Disruption of Political Meetings

3.1) The Suffragettes, Political Militancy and the Public Meetings Act 1908

The problems of keeping order at meetings came to the forefront during the militant practices of the suffragettes whose high profile campaign to disrupt political meetings was most prominent between 1905 and 1908. The Suffragettes largely targeted Liberals after the Prime Minister, Sir Henry Campbell-Bannerman, told one of the leading suffragettes, Christabel Pankhurst, that his cabinet was largely opposed to female enfranchisement. Historian Martin Pugh suggested that prominent Liberals of the time, such as Winston Churchill and Lloyd George, enjoyed the extra newspaper publicity, and even used it to exercise their wit and humour. This was illustrated by the suffragette heckle, 'We have waited for forty years' to which Lloyd George replied,

³⁵⁷ Thornton, *Public Order*, p. 122. This example reflects the greater ethnic diversity of Bradford as opposed to Devon, and the greater potential for hostility, provocation and disorder in the West Yorkshire city.

'I must say the lady rather looks it'.³⁵⁸ Christabel Pankhurst argued that the publicity was beneficial to the suffrage movement, adding that it diverted press attention away from the ministers' speeches.³⁵⁹ Suffragettes were often violently ejected by the stewards, who were acting under the orders of the organisers, which subsequently generated condemnation of the Liberal Party's attitude to civil liberty.

In 1905, Christabel Pankhurst and Annie Kenney were ejected from the Free Trade Hall, Manchester which was addressed by Liberal MP Sir Edward Grey. Grey refused to answer their questions on female suffrage which were ruled out of order. Following Pankhurst's cry of, 'Treat us like men!' the two agitators were forcibly removed from the hall by the police.³⁶⁰ The charges of disorderly conduct, assault and obstruction, which were brought against Christabel Pankhurst, related to the events after the eviction when she spat in the face of a police officer, and attempted to address a crowd on the street outside the hall. The extensive publicity that was gained as a result of the disruption of the high profile political meeting in Manchester heralded the start of the suffragettes' defiance of the law as it became clear that militancy 'paid off'.³⁶¹ Political disruption became a common suffragette tactic.

At a Liberal Party meeting at the Albert Hall on 5 December 1908, the methods employed by the stewards in evicting female hecklers were subject to fierce criticism in the correspondence printed in *The Times*. Descriptions of the ejections included the powerful statements, 'Of the first half-dozen women ejected, four at least were fallen on with extreme violence by the stewards, sometimes thrown on the ground in

³⁵⁸ M. Pugh, *The March of the Women: A Revisionist Analysis of the Campaign for Women's Suffrage, 1866-1914*, Oxford University Press (2000) p. 189-190.

³⁵⁹ Ibid. p.188 see also, C. Pankhurst, 'Why we Protest at Cabinet Minister's Meetings', WSPU, 1908.

³⁶⁰ *Daily Express*, 16 Oct 1905.

³⁶¹ C. Rover, *Women's Suffrage and Party Politics in Britain 1866-1914*, Routledge and Kegan Paul Ltd (1967) p. 80.

the struggle, and... were pommelled and knocked about.³⁶² Other descriptions from witnesses at the meeting recorded that the actions of the male stewards towards the female interrupters were 'regrettable and scandalous' asserting that the women were 'handled with a brutality which was a disgrace to our sex, and to any civilised country.'³⁶³ The interruptions caused by the women were also subject to different interpretation. One letter described the female heckling as 'no more than ordinary interruptions made by men at political meetings for which they are never thrown out', adding that these women suffer missiles and assaults at their meetings but instead of ejecting people they 'control meetings by the ordinary political methods of good temper and firmness.'³⁶⁴ The opposing view insisted that, 'Some of these ladies were so persistent in their attempt to interfere with the meeting that they had to be ejected' but continued to suggest that this should be done by 'muscular women... as it is very repulsive to see a woman struggling in the arms of men'.³⁶⁵

The interruptions organised by the suffragettes revealed the conflicting contemporary views regarding the disruption of meetings and the freedom to heckle political speakers. The legacy of the militant suffragettes' tactic of disrupting political meetings can be detected in a new offence that was introduced and passed through Parliament in the same month as the controversial Albert Hall meeting.

The legal issue that was highlighted by the suffragettes' interjections was addressed in the memorandum which preceded the Public Meeting Bill 1908. It declared that no legal provision existed to remedy the problem of a person or body of persons breaking up a public meeting or preventing any of the speakers from being heard

³⁶² *The Times*, 8 Dec 1908.

³⁶³ *The Times*, 7 Dec 1908.

³⁶⁴ *The Times*, 8 Dec 1908.

³⁶⁵ *Ibid.*

unless an actual assault took place. The object of the Bill was to create an offence of disorderly conduct at a meeting with the purpose of preventing the transaction of business.³⁶⁶ The Bill was presented to Parliament by Conservative MP Lord Robert Cecil on Friday 18 December 1908 and was rushed through Parliament. There was a mixed response in the House of Commons to the Bill's effect on civil liberty. Liberal MP Josiah Wedgwood, who was critical of the Bill, declared it 'was the worst blow at the right of expressing individual political opinion that had been delivered for a long time.'³⁶⁷ Other MPs, such as the Liberal William Byles, praised the clause as it offered to preserve the priceless liberties of free speech and free expression. He added that the object of the Bill was not to make an offence of disorderly conduct at political meetings, but disorderly conduct that was for the express purpose of preventing the transaction of business. In a response to those who opposed the Bill on the grounds of civil liberty, he stated that, 'his hon. friends were championing the rights of those blackguards who came on purpose to prevent the object of the meeting being carried out'.³⁶⁸

An important feature of the Commons debate of the Public Meeting Bill was that experience of disruption and violence at political meetings was widespread. Labour MP William Crooks declared, 'My experience has been that it was the Liberals who broke up my meetings.'³⁶⁹ Will Thorne, also a Labour MP, stated:

No men in that House had been through the mill more than he had in regard to political meetings. On one occasion at Camborne he got an awful bashing, yet he was not prepared to vote for a Bill which would prevent anyone making inter[~~text missing~~ – *interjections at*] such gatherings... It was for those who

³⁶⁶ House of Commons Parliamentary Papers. *Public Meeting. A Bill to Prevent Disturbance of Public Meetings* (1908).

³⁶⁷ *HC Deb* 19 December 1908 vol 198 cc2330.

³⁶⁸ *Ibid.* c2340.

³⁶⁹ *Ibid.* c2334.

organized the meetings to make proper provision against those who would try to prevent the speakers being heard.³⁷⁰

The armament of a legal provision to protect public meetings from disruption was defended by Liberal MP Edward Hemmerde who declared that most disruption could be attributed to women and socialists. He stated his praise of the Bill as the measure gave them a 'chance of clearing public meetings and public discussions of what was rapidly becoming an intolerable nuisance.'³⁷¹ In some circumstances the disorder was even tolerated. Crooks described interjections as 'the salt of public meetings'³⁷² while Wedgwood pleaded that, 'it would upset traditions which had obtained for 500 years,' and he therefore hoped that 'even at this eleventh hour it would be successfully opposed.'³⁷³ Cecil successfully defended his Bill and it became law on 21 December 1908:

If the small knot of people were not stopped it meant the denial of free speech, or if the other members of the meeting endeavoured to stop the interrupters it meant a free fight. Lynch law or the denial of free speech was the alternative with which they were confronted.

However, despite the passing of the Public Meeting Act, the duty of the police at public meetings was still vague and inconsistent across the United Kingdom.

3.2) The Debate regarding the duty of the Police at Public Meetings

The prevalence of political disruption in mainstream politics was highlighted in the 1908 by-elections at Chelmsford, which was contested by the Conservative Unionist, Ernest Pretyman and the Liberal, Mr A Dence. Although the violence exercised at the meeting at Ingatestone was not necessarily unusual, or any more severe than in

³⁷⁰ Ibid. cc2331-2332.

³⁷¹ Ibid. c2334.

³⁷² Ibid. c2337.

³⁷³ Ibid. c2331.

other parts of the country, especially at election time, it was the practice of the police which gave the incident national attention. *The Times* described the Chelmsford division as 'old fashioned' adding that the use of eggs as political weapons had 'not yet gone out of date in the elections here'. A description of one by-election meeting recorded, 'Mouth organs were played and fireworks were exploded in a crowded hall, and for half an hour the Liberal candidate tried in vain to obtain a hearing'³⁷⁴ demonstrating the loudness and disorder that was prevalent. The public meeting Dence was due to address at Ingatestone on 25 November 1908 which was abandoned at the last moment, revealed the variation of police practice. It was reported that the meeting was forcibly entered by 50 youths who threw aside the doorkeepers and violently ejected the Liberals inside. One was the temporary Liberal agent, Mr Martin, who was carried out to the street, being dropped along the way, and was rescued by friends who brought him into a side room of the hall where he fainted.

The report of Police Sergeant Willsmer to the Chief Constable of Essex Constabulary revealed that Mr Martin had requested a police presence inside the hall and informed the Sergeant that 'a number of roughs were coming from Chelmsford and Brentwood to upset the meeting'.³⁷⁵ However, Willsmer refused the request stating that the police were not allowed to be present in the hall and it was up to the organisers to keep order at their own meeting. Following this disturbance, Liberal Unionist Austen Chamberlain asked the Home Secretary, Herbert Gladstone, whether he knew that different police forces in the country held different views of

³⁷⁴ *The Times*, 26 Nov 1908.

³⁷⁵ Cd. 4673, 'Report of the Departmental Committee', Appendix IV, Copy of report made to the Chief Constable of Essex..., p. 22.

their duties regarding the preservation of order at public meetings and suggested that a committee should be appointed to inquire into the conduct of the police.

The Departmental Committee on the Duties of the Police with respect to the Preservation of Order at Public Meetings was duly appointed publishing its report on 14 April 1909. The Committee interviewed the Metropolitan Police Commissioner, as well as the Chief Constables of four counties and six large boroughs to establish the range of police practice. The Report determined that the varying practices of the Chief Constables could be classified by three distinct principles:

- (1) That it is unwise for police to interfere with political meetings any further than they are bound to do in order to prevent actual breaches of the peace;
- (2) That it is expedient to assist the promoters of public meetings to keep order inside, but that this is a special duty of the police which must be paid for by the persons desiring their assistance;
- (3) That keeping order inside public meetings is part of the ordinary duties of the police, for which no payment ought to be asked.³⁷⁶

The Committee did not advocate any action to bring uniformity of police practice to public meetings as it was believed that the three different systems 'have in each case been adopted either in consequence of, or with the sanction of, the public opinion in each locality.'³⁷⁷

The Departmental Committee minutes of evidence revealed the consensus among the Chief Constables that the Public Meeting Act 1908 was a weak statute that did not confer any additional powers or impose any additional duties on the police. With barely any exception, the Chief Constables would not direct the police to prosecute interrupters, but would require that the charge sheet was signed by the promoter or a steward of the meeting. The Committee considered the possibility of strengthening

³⁷⁶ Ibid. p. 15.
³⁷⁷ Ibid.

the Act by adding a power of arrest without warrant, but considered that the arrest of an interrupter would probably tend to further excite hostile opinion, and may even find disfavour among the supporters of the meeting. Chief Constable Dunning of Liverpool City Police expressed his dissatisfaction by stating that such a short Act of Parliament had too many pitfalls. In his questioning, it is established that if the police were to bring a prosecution under this Act, they would first have to prove that it was a lawful public meeting; second, that there was a disorderly act by someone in preventing the transaction of the business for which the meeting was called; and third, they would have to prove the intent of the person was to obstruct the meeting. Because of the wide discretion involved, Dunning explained that the Public Meeting Act should only be instigated by the injured person and not the police. Further to the inadequacy of the Act, he also clarified that there was no power of arrest under this statute if the disorderly person refused to give their name to the police.³⁷⁸

The principal reason that the Departmental Committee refused to support any new legislation, which imposed a duty on the police to undertake the role of stewards inside public meetings was that it would 'be resented by public sentiment as an apparent infringement of the liberty of public meeting.' It also added that the police force were the 'guardians of public order' and if such duty was imposed on them, they would be the first to 'resort to physical force, instead of merely "keeping the King's peace" as at present.'³⁷⁹ The Report highlighted that the Chief Constables who followed a policy of non-interference at public meetings were unanimous against Chamberlain's proposals. Even those Constabularies who followed a policy of stationing police officers inside public meetings opposed the proposals, as their

³⁷⁸ Cd. 4674, paras 603-611.

³⁷⁹ Cd. 4673, p 14.

practice was to 'abstain from taking any action until they are called upon to assist the stewards in resisting violence or until a breach of the peace arises.' Under these two practices, the maintenance of police impartiality is declared to have been comparatively easy. Yet, referring to the suggested proposals, the report concluded that 'an indiscretion or failure [on the police's] part would be more serious in its consequences than in the case of ordinary stewards.'³⁸⁰

Therefore, the maintenance of impartiality of police conduct was a decisive factor, and it was considered that this could be achieved with as little police interference as possible. However, by the 1920s the organised disruption of political meetings by the far-Left was rendering them impossible with speakers unable to be heard. A letter from Conservative and Unionist Chairman J. Davidson to the Home Secretary William Joynson-Hicks stated that within two months it was impossible for their speakers to attain a hearing at four of their meetings. A socialist pamphlet which instructed their members on how to disrupt meetings accompanied the letter. The pamphlet included the signals that the group marshal would use to initiate interruption by either the shouting of slogans or the singing of far-Left anthems.³⁸¹

The Home Office considered strengthening the Public Meeting Act and it was again highlighted that police practice at public meetings varied across different regions. Furthermore, it reinstated the 1909 Departmental Committee's disclosures that police practice varied amongst different towns and boroughs. In the Metropolis and many other large towns and most County forces, the practice was that police were not allowed to enter public meetings. In Manchester, Cardiff and a majority of boroughs it was highlighted that police officers were allowed in the meeting on the

³⁸⁰ Cd. 4673, para 34.

³⁸¹ TNA, HO144/20069, Letter from C. Davidson regarding 'Rowdyism at Meetings', 5 July 1927.

application of the promoters, while in Birmingham and 'a few other places' it was considered that it was 'the ordinary course of their duty' to attend inside public meetings regardless of an application from the promoters or not.³⁸² Following a Home Office consultation with Chief Constables it emerged that no legislative action should be taken as the consensus was that the existing law was sufficient in its provisions to keep order at meetings provided that the onus was on the promoters to prosecute interrupters under the Public Meeting Act 1908 which would effectively prevent future disturbances.³⁸³

The authorities concern with maintaining public order at public meetings centred primarily on the disorder caused by interrupters. Even in the era of the suffragettes, the violent stewarding was mainly criticised on the basis of gender, arguing that it was more appropriate for females to be ejected by other females. The reassessment of the law regarding disorder at public meetings in the 1920s highlighted that the majority of Chief Constables were reluctant to have their powers increased, instead favouring the promoters of meetings to make adequate arrangements and initiate their own legal proceedings against interrupters. However, in the 1930s when the BUF used their trained stewards of the Fascist Defence Force to keep order, the spotlight regarding the disorder at public meetings shifted its focus upon the stewards, rather than the interrupters. Additionally, with wide police discretion available regarding public meetings and varying police practice still present across England and Wales, the disparity between police responses was to come under intense focus.

³⁸² TNA, HO144/20069, 'Memorandum by the Home Secretary: Public Order Committee, Police and Public Meetings'.

³⁸³ TNA, HO144/20069, 'Letter from Sir Vivian Henderson (on behalf of the Home Secretary) to J. C. C. Davidson, 19 Jan 1928.

4) Responses to Fascist and Communist Meetings between the Wars

The different application of police powers at the BUF meeting at Olympia, London on 7 June 1934 and the communist meeting in Caerau, Wales, just two months later on 17 August, have been frequently compared, yet vital differences that offer justification for a non-politically motivated police action has been neglected.³⁸⁴ It is argued here that the police were hindered by wide discretion associated with ineffective legislation, ambiguous common law powers under the breach of the peace doctrine, and different past experiences with both political movements to consistently maintain public order.

During the interwar period the issue of police partisanship was addressed by Parliament and the NCCL.³⁸⁵ The accusations had heightened in the aftermath of the BUF's public meeting at Olympia. For the BUF, the Olympia meeting represented a political triumph with an unprecedented 15,000 spectators.³⁸⁶ Mosley had brought the spectacle of large scale fascist rallies to British politics, emulating the methods of their Nazi counterparts. Eyewitness accounts have recorded the unnecessarily aggressive removal of hecklers and violent assaults conducted by the BUF stewards.³⁸⁷ Despite the violent physical attacks exerted on members of the crowd, the Metropolitan Police did not intervene or attempt to prevent the BUF's gratuitously violent stewarding. The failure of the police to stop Blackshirt brutality and take effective control of the event attracted much criticism. The Home Secretary, Sir John

³⁸⁴ See Ewing and Gearty, *The Struggle*, pp. 282-295. Lewis, *Illusions of Grandeur*, p. 165.

³⁸⁵ For examples, see, *HC Deb* 10 July 1936 vol 314 cc1566, *HC Deb* 25 June 1936 vol 313 cc1943, Kidd, *British Liberty*, pp. 123-158 and (HHC), U DCL/75/2, NCCL Circular 'Police Discrimination', U DCL/75/2 'Disturbances in East London' p. 8.

³⁸⁶ In *Blackshirt*, 15 June 1934, p.3 and other contemporary reports such as *The Times*, 8 June 1934, p. 16 it was claimed that 15,000 men and women were in the audience, yet the figure most accepted by historians is 12,000 audience members. See Pugh, '*Hurrah for the Blackshirts!*', p. 156 and Thurlow, *Fascism*, p. 71.

³⁸⁷ For examples see I. Montagu, *Blackshirt Brutality*, Workers Bookshop Limited (1934), and HHC U DCL/40/1 NCCL's 'Enquiry into Olympia'.

Gilmour, defended the police, asserting that they had no legal authority to enter a public meeting unless they were invited to do so by the organiser, or had good reason to believe that a breach of the peace was being committed.³⁸⁸ No legislation existed to confirm the legality of the police entering a meeting and, in defending the police action at Olympia, Gilmour had to rely on the Report of the Departmental Committee from 1909. The uncertainty of police powers and their legal authority with regard to meetings held on private premises could potentially excuse the police of employing politically motivated methods at Olympia. However, this view does not vindicate the police decision not to enter the hall using common law powers when eyewitness accounts clearly demonstrated that severe disorder had occurred.

The NCCL, which had only formed in the February of 1934, collected numerous statements from spectators at Olympia in order to conduct an enquiry to investigate whether the allegations of 'Blackshirt brutality' could be justified. The majority of the recordings were critical of the fascist stewards and it is clear that the police would have been aware that a breach of the peace was occurring in the hall, thereby giving them the right to enter:

Wounded people began to leave the Hall. Hysterical women came out shrieking, "There's murder going on in there!" Then young men and women came out, all in a very distressed condition. Many women were holding their breasts and their faces displayed signs that they had been clawed by finger nails. The young men were in a deplorable condition. One man I saw, who was being assisted along by kind friends, looked as though an animal had attacked him, his face was mauled, his legs were dangling and his clothes were torn. Other men who were being assisted out had damaged faces and had the appearance that they were suffering from rupture. Practically all the men had smashed faces, not just bruised faces, but smashed faces.³⁸⁹

³⁸⁸ *HC Deb* 11 June 1934 vol 290 cc1343-1344.

³⁸⁹ HHC, U DDC/5/364, 'Eye Witnesses at Olympia', p 9.

The NCCL's appeal for witnesses to the fascist brutality, demonstrated that their position was sympathetic to the abused interrupters; namely the anti-fascists. Despite the horrific scenes described, it is difficult to form a critical view from these descriptions alone as they were collected with the objective of holding the BUF accountable for the violence that occurred. This bias was addressed by a critic of the enquiry, who wrote to the NCCL's founder and secretary, Ronald Kidd, stating that 'any body which has the temerity to call itself 'The Council for Civil Liberties' should disdain even the appearance of impartiality' and underlined the actions of the interrupters, contending that the organised breaking up of a meeting with the use of weapons was also an infringement on civil liberties.³⁹⁰ The NCCL did have an openly anti-fascist stance. For Sylvia Scaffardi, a co-founder of the Council, fascism represented 'the thunder of brute force [that threatened] to trample and overrun the sensitive humanitarian world.'³⁹¹ She acknowledged that in 1934 the image of fascism was still respectable to the wider public who were not involved in politics.³⁹² Reports from Germany on the treatment of the Jews and the *Brown Book of Hitler Terror*, published by Victor Gollancz in 1933, which contained statements and documents on Nazi violence, interrogation, torture and murder, also influenced the NCCL's contempt of fascism. Therefore, fascism represented an end to the ideals of individual freedom and liberty that the council were defending, which initiated their anti-fascist stance in Britain. The stated objective of the NCCL weakens the reliability of the extreme testimonies they collected. This does not absolve the Blackshirts from their violent actions but addresses the need to analyse their account of the event.

³⁹⁰ HHC, U DCL/40/1, letter from D. O'Conner, 16 June 1934.

³⁹¹ S. Scaffardi, *Fire Under the Carpet: Working for Civil Liberties in the 1930s*, Lawrence and Wishart Limited (1986) p. 49.

³⁹² *Ibid*, p. 61.

The BUF's version of Olympia was recorded in their weekly newspaper *Blackshirt*.³⁹³ Their propaganda predictably confirmed that the communists were responsible for the violence and were determined to 'Kill Mosley'.³⁹⁴ BUF propaganda officer A K Chesterton's report detailed a 'frenzied Red minority' who were determined to prevent Mosley being heard and that large groups of communists set upon stewards who tried to remove hecklers. He glorified the heroics of the Blackshirts who were 'fighting with their bare fists against the foulest weapons daggers, razors, stockings filled with broken glass, everything that the criminal lunatic, mentality could devise.'³⁹⁵ In his autobiography, Sir Oswald Mosley quoted the Conservative MP Patrick Dormer's account from the *National Review*:

[The Communists] marched from the East End, the police kindly escorting them, with the avowed purpose of wrecking the meeting... and with my own eyes I witnessed gangs of Communists (some of them dressed in black shirts to make identification of those responsible for the uproar more difficult) resisting ejection with the utmost violence. If then, as cannot be disputed, some of these hooligans were armed, can it in equity be argued that the stewards used their fists, when provoked in this manner, with more vigour than perhaps the situation required?³⁹⁶

This perception reversed the accusation of police partiality and also highlighted the nature of the resistance by those the stewards were ejecting. Mosley claimed that at their own dressing stations 'highly qualified medical personnel' treated 63 Blackshirts 'for injuries, mostly abdominal, and injuries caused by blunt instruments'. Mosley's descriptions of the injuries sustained to Blackshirts were just as brutal as the statements collected by the NCCL. These included a female Blackshirt who suffered a cut to her eye, down her cheek and neck, finishing between her shoulder blades as

³⁹³ *Blackshirt*, 15 June 1934. see pages 1-2 for, 'The Truth about the Olympia Disorder', p. 3 for A.K. Chesterton's article, 'Reason's Triumph: Red Terror Smashed at Britain's Biggest Meeting' and p. 8 for Oswald Mosley's account, 'Triumph of the Blackshirt Spirit'.

³⁹⁴ *Ibid*, p. 1.

³⁹⁵ *Ibid*, p. 8.

³⁹⁶ Mosley, *My Life*, p. 247 .

well as several Blackshirts who 'were laid up for three weeks' after being kicked in the head and stomach and attacked with blunt objects. Mosley also claimed that there were no serious injuries caused to the interrupters, but whatever the validity of the different accounts there is no question that a breach of the peace had occurred.

5) Changing Attitudes to Political Violence

The Olympia meeting was a pivotal moment in the history of the BUF and has received much critical attention. Thurlow argued that although the initial effect of the meeting was to attract a large number of new recruits, with many new members being attracted to the BUF's dedication to the preservation of free speech and its stance against Left-wing activism, they lost the long term 'propaganda war concerning responsibility for the violence... and in retrospect it marked the turning-point in the fortunes of the movement.'³⁹⁷ This is the general summary of textbook analysis, yet an evaluation of the responses to Olympia prompts further questioning of the contemporary political culture and reactions to political violence.

Lawrence introduced the pre-war political culture in which the 'old ways' of party politics and the disorder that occurred are referred to as a 'form of sport' and argued that it was commonly accepted by some politicians that the mobilisation of a private force was necessary to ensure successful political meetings.³⁹⁸ He contended that this view changed after the First World War when 'the politics of misrule ceased to be tolerated by the vast majority of politicians.'³⁹⁹ Pugh responded by stating that when old attitudes change they do so gradually and 'that many of the inter-war MPs had grown up in an era when political violence was routine and they retained the

³⁹⁷ Thurlow, *Fascism*, p. 64, 71.

³⁹⁸ Lawrence, 'Fascist violence', p. 241.

³⁹⁹ *Ibid*, p. 242.

assumptions of an earlier generation.⁴⁰⁰ The historical debate between Lawrence and Pugh established that there was conflicting contemporary opinion on the acceptability of using violence in order to protect a political meeting. Despite the shock that the eyewitness accounts evoke from the modern reader, the conflicting contemporary attitudes concerning the entitlement of the organisers and their stewards to use 'reasonable necessary force' created a challenging situation for the use of police discretion in this era.

A greater understanding of the contemporary political culture and legal framework generate questions that demonstrate the complexity of the issues faced by the police and politicians. The situation at Olympia cannot be simplified by explaining police actions as either pro-fascist or anti-communist. While the nature of the fascist violence cannot be excused, it would be naïve, considering the advertised communist campaign to stop the meeting, to regard all of the ejected as innocent victims. However, many of the reports recorded in the national press demonstrate that the Blackshirt brutality was indiscriminate and unjustifiable. *The Times* recorded some of the injuries sustained at the meeting, declaring that 70 patients were treated by doctors and several had to be detained in hospital. The injuries varied from a woman with external bleeding after blows to the abdomen, 'a man with five lacerated wounds in the scalp (said to be caused by a blow with a fire extinguisher)' and a man with a 'badly lacerated finger, obviously caused by some sharp cutting instrument.'⁴⁰¹ These examples demonstrate that women were also indiscriminately attacked, usually by female Blackshirts, but perhaps more importantly, that the Blackshirts were accused of using a variety of weapons to maintain order, including purposefully

⁴⁰⁰ Pugh, 'The National Government', p. 255.

⁴⁰¹ *The Times*, 9 June 1934.

brought weapons of a discreet nature such as the 'sharp cutting instrument', or the use of nearby objects such as the fire extinguisher.

Correspondence from audience members published in *The Times* provided a balanced view of the event. In his short defence of Blackshirt action, Aylmer Haldane declared that the 'interrupters only received the treatment which they deserved' and that a 'forcible ejection of such intruders [was] the only remedy left' to preserve the meeting for the majority who wished to hear Mosley's speech.⁴⁰² Nonetheless, it would be incorrect to assume that Haldane's view on the necessity of force was common among other audience members. Haldane was an army officer who began his military career in 1881. In his account of how an insurgency was put down in *The Insurrection in Mesopotamia, 1920* he insisted that 'The Arabs of Iraq respect nothing but force, and to force only will they bend'.⁴⁰³ Most members of the audience, attending the Olympia meeting out of curiosity of what fascism had to offer, were put off by the brutal exhibition of violence. This was the experience of T. S. Singleton-Fleming in his letter published the same day. He highlighted the 'disgusting display of force' and the 'un-English theatricalism and schoolboy hooliganism... [which] made it quite impossible for us to take fascism seriously.'⁴⁰⁴

While it could be argued that anti-fascist witness statements may have embellished the disorder that occurred, it becomes necessary to examine the perspectives of the police officers that were on duty. Police reports from the Olympia meeting demonstrate that, not only were some police officers aware of the disruption inside,

⁴⁰² Ibid.

⁴⁰³ A. Simpson, 'Haldane, Sir (James) Aylmer Lowthorpe (1862–1950)', *Oxford Dictionary of National Biography*, Oxford University Press, Oct 2008; online edn, May 2009.

[<http://www.oxforddnb.com/view/article/95438>, accessed 12 Oct 2010]

⁴⁰⁴ Ibid.

but that the graphic descriptions from the eye-witnesses were not necessarily exaggerated. One Special Branch Officer reported that:

At 10.43 p.m.... A man was thrown through the entrance by three fascists into the street. One leg of his trousers had been torn off, and the other was round his ankle. His private parts were exposed, and he was bleeding freely from a head wound.⁴⁰⁵

Special Branch Sergeant Hunt, who was stationed inside the hall as an observer, witnessed 'about 50 persons ejected. They were handled in a most violent manner and in some cases were punched unconscious and their clothing torn.'⁴⁰⁶ Another Special Branch Sergeant recorded that the strong opposition put up by interrupters, 'no doubt accounted for the great deal of the violence used upon them' but also witnessed hecklers that offered to walk out without fighting were still set upon by stewards and 'not allowed to do so without molestation.'⁴⁰⁷

In one instance, a Police Inspector assisted by ten Police Constables actually entered the building when a 'linkman' working for the Olympia venue informed him that a person inside needed assistance. Inspector O'Carroll's report stated that apart from the man 'in a state of semi-coma' he witnessed, 'six groups, each containing six to eight 'Blackshirts' beating and kicking unmercifully a man in the centre of each group.'⁴⁰⁸ He then rescued a youth being brutally beaten by four Blackshirts on the stairs. Interestingly, his account of the proceedings changed after he was interrogated by the Deputy Assistant Commissioner. The amended version of the events, absolved O'Carroll from not making any arrests as he now stated that the youth '*appeared to have been* beaten in a brutal manner' rather than '*was being*

⁴⁰⁵ TNA MEPO 2/4319: SB Sergeant Popcock, 7 June 1934.

⁴⁰⁶ Ibid. SB Sergeant Hunt, 8 June 1934.

⁴⁰⁷ Ibid. SB Sergeant Hilley, 8 June 1934.

⁴⁰⁸ Ibid. Inspector O'Carroll, 8 June 1934.

beaten in a brutal manner' and that those responsible immediately ran making it impossible for him to restrain or identify them.⁴⁰⁹ The seriousness of the assaults had also been lessened in the amended account, which highlighted that none of the individuals that he rescued accepted medical attention. The Deputy Assistant Commissioner defended O'Carroll's actions and stated that 'I am of the opinion that he acted with sound judgment in very difficult circumstances, and that his reasons for not making arrests are clear and sufficient.'⁴¹⁰ The difference of accounts does call into question the validity of police statements and their personal bias to protect or justify their own actions.

In the month following the Olympia meeting, the Metropolitan Police Commissioner, Lord Trenchard, wrote a Memorandum to the Home Secretary that emphasised that the fascists were the main cause of the recent disorder. Mosley frequently absolved his movement from any responsibility for violent confrontations, arguing that the BUF Defence Corps was a necessary measure to ensure his movement's 'right' to freedom of speech. Trenchard highlighted that the main source of disruption at fascist meetings was caused by the 'abnormal provocation provided by the existence of a private uniformed "army" adopting continental methods and ideas'.⁴¹¹ His memorandum does not demonstrate any sympathy for the fascist movement and he suggested that legislation should be introduced along the lines of a recent Swedish Act, which prohibited the formation of, or the taking part in, an organisation which was 'intended to serve as a defence corps for a political party or similar group'.⁴¹² It was Trenchard's belief that this measure, along with prohibiting uniforms for political purposes, that would prevent further disorder on a large scale.

⁴⁰⁹ Ibid. DAC 1, 9 June 1934.

⁴¹⁰ Ibid.

⁴¹¹ TNA CAB/24/250 'Memorandum by the Commissioner of Police of the Metropolis' (1934), p. 1.

⁴¹² Ibid, p. 2.

Trenchard addressed the issue of freedom of speech with regard to the organised disruption of fascist speakers, arguing that political opponents were free to talk back and it should only become a concern of the authorities if the simultaneous communication leads to a breach of the peace. In the event of a public meeting the chairman had the right to ask an interrupter to leave, and stewards had the right to remove the person if they declined. On this issue, Trenchard stated that it was the responsibility of the police to interfere as little as possible and that the onus of keeping order in a meeting should stay with the stewards. The only detail that he would have liked to have changed was that it should be within the discretion of the Chief Officer of Police to deploy a sufficient number of men in the hall whether it was asked for by the organisers or not. This should be a power employed only on rare occasions wherein the police should only deal with unnecessary violence and fighting if disturbances develop throughout the hall, and ultimately they should be empowered to order the chairman to close the meeting and withdraw his supporters.

Trenchard's suggestions demonstrated that although he did not want the police to become embroiled with the stewarding of public meetings, he was not politically motivated either. Furthermore, as the police's responsibilities included the maintenance of public order, his post Olympia suggestions represented a proportionate response that could have prevented further confrontations and brutality. Home Office papers demonstrate that many Chief Constables were in favour of new legislation to clarify police presence and powers at public meetings.⁴¹³ Fifteen Chief Constables participated in discussion with the Metropolitan Police Commissioner following the Olympia event for the purpose of drafting his memorandum and

⁴¹³ See HO 45/25386 for drafts of the 'Memorandum by the Commissioner of Police of the Metropolis' and minutes to the suggestions made by the 15 other Chief Constables.

proposing new legislation. All of the Chief Constables agreed, to some extent, that the police should assist stewards in removing interrupters when it became necessary. The object of this request was not just to support the stewards in keeping order during their meetings but also, as the Chief Constable of Durham pointed out, to empower the police to act when a breach of the peace occurred, whether it was from organised interruption or excessively violent stewarding.⁴¹⁴ Although there was an overwhelming consensus that the police should be present at public meetings, there was some disagreement to the point at which the police should intervene. This was either after a breach of the peace had occurred as already suggested or, as the Chief Constable of Southport declared, when a breach of the peace was likely, adding that any person who acted in a way which was likely to cause a breach of the peace should also be prosecuted. He went even further to check fascist aggression by stating that organisers should be required by law to appoint stewards who should be subject to the direction of the police if they are present.⁴¹⁵ Whether there to help preserve or to restore public order, the lawful presence of the police at public meetings without the necessary invitation of the organisers was the ultimate ideal.

These suggestions reveal that a number of constabularies were eager to attain new and clear legislation to be able to deal with the problems of public order associated with BUF meetings and communist interruption without any partiality. Despite the uncertainty of existing powers, the police would have been expected to have intervened when the violence at Olympia had become apparent. They would also have had the power to arrest a person they had seen commit a breach of the peace, or a person that had been charged by another for a breach without a warrant being

⁴¹⁴ TNA, HO 45/25386/346.

⁴¹⁵ TNA, HO 45/25386/347.

necessary.⁴¹⁶ Police inaction cannot be attributed solely to unclear police powers. Nor can it be claimed that police discretion had allowed the Blackshirt violence to have been deemed as reasonable necessary force. Yet, despite clear indications that Lord Trenchard and many of his colleagues had no sympathy towards either the fascists or the communists; his memorandum particularly identified the fascists as the cause of much of the disorder, as well as being a drain on police resources.

6) A New Power: Anticipating a Breach of the Peace

It was not the enactment of new legislation that enabled the police to legally enter meetings when they apprehended a potential breach of the peace, but the common law authority of *Thomas v Sawkins*. The background to this case needs further clarification in order to elucidate the differences between the events at Caerau and Olympia. Two months after the Olympia meeting, on 17 August 1934, Police Inspector Parry, along with Sergeants Lawrence and Sawkins of the Glamorgan County Police, entered the communist meeting at Caerau using common law powers, anticipating that the meeting could become an unlawful assembly, a riot, that a breach of the peace may occur, or that seditious speeches were to be made. They refused to leave the premises after Alun Thomas, a speaker at the meeting, had lodged a complaint against the officers at the police station. When Thomas proceeded to exercise his believed right to eject the police and placed his hand on Parry's shoulder, Sergeant Sawkins intervened by pushing Thomas' arm and hand away and stated, 'I won't allow you to interfere with my superior officer.'⁴¹⁷ Thomas brought a criminal prosecution against Sawkins under s42 of the Offences Against the Person Act 1861. It was agreed that neither Thomas nor Sawkins used more

⁴¹⁶ Cd 4673, (1909) para 8.

⁴¹⁷ [1935] 2 KB 249, at p251.

force than was reasonably necessary in the execution of their duty as steward or police officer, but if the prosecution could prove that Sawkins had no right to be in the hall at the time of the incident, his actions would have constituted assault. The magistrates held that the police were entitled to be on the premises and the charge of assault was dismissed. An appeal was taken to the Divisional Court where Lord Chief Justice Hewart asserted that ‘a police officer has *ex virtute officii* full right so to act when he has reasonable ground for believing that an offence is imminent or is likely to be committed’ and dismissed the appeal.⁴¹⁸ This was a controversial outcome, and Thomas Kidd of the NCCL reflected on its potential effect stating ‘Judge-made law, as binding as parliamentary law, could undermine democracy.’⁴¹⁹

For the respondent, Vaughan Williams KC argued that the police by oath swear to keep the peace and, by their duty of preventive justice, have a right to enter private premises to prevent a breach of the peace.⁴²⁰ For the appellant, Sir Stafford Cripps KC argued that although the duty of the police was to preserve the King’s peace, they may only enter private premises without a warrant, to either:

take a felon, where a felony has been committed and a particular person is reasonably suspected to be the offender, where a felony is likely, or about, to be committed, where he hears an affray on the premises, or to pursue and arrest those who have taken part in an affray.⁴²¹

Other examples were used to demonstrate that existing provisions to empower a constable to enter private premises did not apply: ‘There is no authority empowering

⁴¹⁸ Ibid, 255.

⁴¹⁹ Scaffardi, *Fire Under the Carpet*, p. 78.

⁴²⁰ [1935] 2 KB 249, at p253.

⁴²¹ [1935] 2 KB 249, at p253.

a constable to enter private premises merely because he has a reasonable belief that an offence or a breach of the peace may be committed thereon.⁴²²

In the original hearing held at Bridgend, W. H. Thompson, representing Thomas, quoted the Home Secretary's remarks from the Olympia debate in the Commons. This was a measure that could not be repeated in the appeal case. Despite the Home Secretary's ruling that the police could only enter when a suspected breach of the peace was actually being committed, the magistrates returned with the verdict that the police were entitled to be present and the summons on Sergeant Sawkins was dismissed. The magistrates also heard that the police in Caerau had been 'aggravated' by the 'considerable trouble' caused by recent meetings and marches and had every reason to have anticipated that a breach of the peace would occur.⁴²³

The reasonable anticipation of a breach of the peace was echoed by Lord Hewart who confirmed that it was part of the 'preventive power, and, therefore, part of the preventive duty, of the police... to enter and remain on the premises.'⁴²⁴ Such a strong emphasis on the preventive power of the police has deep implications for civil liberties. This measure does in fact open the discretionary power of the police to act under the apprehension of an offence being committed and effectively punishes the person that the police are acting against without them even committing an offence. Justice Avory reflected on the preventive power of the magistrates. He quoted Justice Fitzgerald in *R v Queen's County Justices*⁴²⁵ who declared that 'magistrates are invested with large judicial powers, for the maintenance of order and the

⁴²² Ibid. at 252-3.

⁴²³ *The Times*, 14 September 1934.

⁴²⁴ [1935] 2 KB 249, at 254.

⁴²⁵ *R v Queen's County Justices* (1882) 10 LRI 294, 301.

preservation of public peace.’⁴²⁶ After referencing that that principle had been approved in *Lansbury v Riley*⁴²⁷ and *Wise v Dunning*⁴²⁸ he contended that the power of a magistrate to bind someone over to be of good behaviour is no different to the duty of the police constable to prevent a breach of the peace.

Despite it being preventive police action, and not the decision of the magistrates, similarities can be drawn reconciling *Thomas v Sawkins* with *Wise v Dunning* and *Lansbury v Riley*. The latter two cases dealt with the binding over of speakers with a known history of using insulting words or words calculated to incite a breach of the peace. The appellants against the magistrates’ decisions were a Protestant lecturer from Liverpool, George Wise, who was known to cause Breaches of the Peace with anti-Catholic speeches and gestures, and Lansbury a supporter of the Women’s Social and Political Union, who was known to incite militancy to advance pressure on the Government to extend the voting franchise to women. Unfortunately, *Thomas v Sawkins* does not define the potential threat to a breach of the peace, or document the history of the appellant as clearly. Yet, reasonable suspicion that seditious speeches would be made was evidenced by the comments of Thomas at a previous meeting. In reference to the police present, he said, ‘If it were not for the presence of these people... I could tell you a hell of a lot more.’⁴²⁹ In the view of the respondent and the other officers, their anticipation of an unlawful assembly, riot or a breach of the peace was based on their knowledge and experience of previous meetings. Avory asserted the authority of the police most clearly confirming that ‘no express statutory authority is necessary where the police have reasonable grounds to

⁴²⁶ [1935] 2 KB 256.

⁴²⁷ *Lansbury v Riley* [1914] 3 KB 229.

⁴²⁸ *Wise v Dunning* [1902] 1 KB 167.

⁴²⁹ [1935] 2 KB 250.

apprehend a breach of the peace'.⁴³⁰ This effectively set a new precedent by providing the police with the power to enter public meetings when a breach of the peace was anticipated.

Regardless of the emphasis on preventive power, other factors were considered in the summing up. It was significant that the meeting was well advertised and members of the public were invited to attend free of charge. Avory insisted that 'There can be no doubt that the police officers who attended the meeting were members of the public and were included in that sense in the invitation to attend.'⁴³¹ Hewart added that it was remarkable to talk of trespass on the part of the police after a public invitation had been issued, especially as part of the business of the meeting was the dismissal of the Chief Constable of the county.

Despite no statutory authority being mentioned to clarify the right of the police to be at the meeting, the Justices accepted that common law had provided significant justification for their actions. *Humphries v Connor*⁴³² demonstrated the extent of the preventive powers available as it was held that a police officer was entitled to commit a technical assault on a person to preserve the public peace. Justice Lawrence referred to this in his summing up stating that 'If a constable in the execution of his duty to preserve the peace is entitled to commit an assault, it appears to me that he is equally entitled to commit a trespass.'⁴³³

7) The BUF Olympia Meeting and *Thomas v Sawkins*: Compatibility for Comparison?

⁴³⁰ Ibid, 257.

⁴³¹ Ibid, 255.

⁴³² *Humphries v Connor* (1864) 17 ICLR 1.

⁴³³ [1935] 2 KB 257.

The different approaches in exercising discretion evidenced by the Metropolitan Police and the Glamorgan County Police have been applied to demonstrate the existence of police partiality. The eye witness accounts of the event at Olympia discussed in this chapter, demonstrate the different attitudes of those present which debate whether the Blackshirts used more than 'reasonable necessary force' when dealing with disrupters or not. This ambiguous phrase, which split the opinion of the audience, highlights the problem of police discretion. Although the Superintendent's decision not to enter the hall to prevent the violent ejection of interrupters was contentious, it was one based more on their contemporary perception of their legal power rather than pure partisanship. *Thomas v Sawkins* was a 'constitutional innovation', in which the Chair of Jurisprudence at Oxford, Arthur Goodhart, argued that no 'case was cited by counsel or in the judgments in which it had been specifically held that the police had this power, and no text-book contains a statement that it exists or has ever existed.'⁴³⁴ As the scenes witnessed at Olympia happened a year before this decision, the Metropolitan Police were understandably more apprehensive about entering the meeting as their actions could have been interpreted as trespass by a court of law if sufficient reason could not be given to justify the use of this discretionary power.

The precedent set by *Thomas v Sawkins* directly conflicted with Gilmour's belief that the police had no legal right to enter meetings 'merely because they apprehend that disorder *may occur*'.⁴³⁵ His Memorandum proposed that the law should be amended to empower the police to enter the premises of a public meeting if the Chief Officer of Police had reason to believe that disorder was likely to occur, whether invited to do

⁴³⁴ A. L. Goodhart, '*Thomas v. Sawkins: A Constitutional Innovation*', *The Cambridge Law Journal*, Vol. 6, No. 1 (1936), pp. 22-30.

⁴³⁵ TNA CAB/24/250, 'Memorandum by the Home Secretary: Preservation of Public Order, July 1934', p. 1.

so by the organisers or not.⁴³⁶ This recommendation would give the police statutory authority to enter the meetings rather than relying on common law powers of anticipating a breach of the peace. In the Commons, Gilmour recognised that the police did have the right to enter if they had good reason to believe that a breach of the peace was being committed.⁴³⁷ Therefore, it was perceived that the police did not have legal preventive powers to enter the Olympia hall on the apprehension of a breach of the peace, but they were empowered to do so on the occasion of a breach of the peace being committed. The Departmental Committee of 1909 addressed the disputable issue of what constituted a breach of the peace at a public meeting. The Chief Constable of Manchester suggested that 'it only occurs when the meeting is broken up by the opposition, and the conveners of the meeting resort to retaliatory methods.'⁴³⁸ Although the Blackshirts' violent approach could accurately be described as retaliatory, the meeting was not broken up and able to continue until its natural conclusion. Therefore, under this tenuous definition a breach of the peace did not occur.

Gilmour asserted the need to strengthen police powers observing that the fascist policy of refusing police help had created a new problem that required the changing of the law.⁴³⁹ The Public Meeting Act 1908 was only effective if the police were asked to assist when organised interruption disrupted a meeting, as it did not contain any provision for the police to enter private premises. The Act did not directly involve the police and by 1934 many Chief Constables considered the Act to be a 'dead letter'.⁴⁴⁰ Another issue emphasised by the Departmental Committee of 1909 was

⁴³⁶ Ibid, p. 2.

⁴³⁷ HC Deb 11 June 1934 vol 290 cc 1343-1344.

⁴³⁸ Williams, *Keeping the Peace*, p. 143.

⁴³⁹ TNA CAB/24/250, pp. 1-2.

⁴⁴⁰ TNA, HO 45/25386/349.

that 'disorderly conduct' did not necessarily amount to a breach of the peace. The difference was highlighted that it was the duty of the police to keep the peace and not to secure a speaker's desire to be heard.⁴⁴¹ The Act was not amended until the Public Order Act 1936.

It is the experience of the Glamorgan County Police and the preventive action mentioned in *Wise v Dunning* and *Lansbury v Riley* that distinguishes these events from the BUF meeting at Olympia. It has been suggested that the difference in police practice in *Thomas v Sawkins* and the Olympia meeting indicate the use of partial law enforcement.⁴⁴² The stimulus behind police action at Caerau was calculated to prevent seditious and inflammatory speeches being made and prevent any potential disorder. In contrast, at Olympia, Mosley's fascist movement had not yet adopted an open anti-Semitic policy, and it would have been anticipated by the authorities that any potential disturbances at Olympia would be caused by organised communist protest, and not because of the potential of seditious speeches being made by Mosley. Therefore, it was still accepted that it was the stewards' responsibility, acting under the instructions of the chairman, to keep order at the meeting. The issue at Olympia was why the police did not enter the meeting despite it being evident that the stewards used more than reasonable necessary force. Yet, if a breach of the peace were defined as disorder that prevented the business of the meeting were applied, then a breach was not present at Olympia offering justification for the police not entering the premises.

The Superintendent responsible for keeping order outside Olympia stated that he was satisfied that they had prevented a serious disturbance that would have led to

⁴⁴¹ Williams, *Keeping the Peace*, p. 139.

⁴⁴² Pugh, '*Hurrah for the Blackshirts!*' p. 165.

injuries and serious damage to property.⁴⁴³ His priorities demonstrate why more action was not taken by the police. If the police had entered the building, there was a risk that their presence would have inflamed the situation. Additionally, in the event of a riot, under section 2(1) Riot (Damages) Act 1886, the Metropolitan Police would have been liable to pay compensation to any person who had sustained loss by injury, stealing, or destruction. Another danger would have been that police action inside the hall could have been interpreted as pro-fascist. In the Commons, Conservative MP Geoffrey Lloyd upheld the view that had a breach of the peace occurred it was not the responsibility of the police to take charge of the meeting, but to help the stewards to restore order.⁴⁴⁴ Therefore, if an interrupter, on refusing to leave the hall when requested, fought the Blackshirt stewards, the obligation of the police would have been to assist in that person's ejection. Although this may have helped regulate the force that was used by the stewards, it could still have been criticised as preferential policing in support of the fascists.

The danger of police intervention provoking serious disorder was reported in *The Times* following the action of the Glamorgan County Police at Caerau. Following the scuffle between Thomas and Sawkins, 20 police officers rushed into the back of the hall and some had batons drawn which created considerable disorder. *The Times* stated that 'It looked as though there was going to be serious trouble... but Inspector Parry then had the good sense to tell the police to withdraw.'⁴⁴⁵ The Superintendent outside Olympia would have had similar concerns to the reaction to a significant number of police officers entering the hall, he stated that the police had 'successfully

⁴⁴³ Ibid. Superintendent Hammersmith Station, 8 June 1934.

⁴⁴⁴ *HC Deb* 14 June 1934 vol 290 c1937.

⁴⁴⁵ *The Times*, 14 Sept 1934.

carried out and upheld the law.⁴⁴⁶ The police had fulfilled their duty impartially, albeit without some controversy.

8) The Continuing Inconsistency of Police Practice

The different uses of discretion applied at Olympia and Caerau raises the issue of diversity in police practice. Following the Olympia meeting, Labour MP Rhys Davies highlighted in the Commons that, the Committee of 1909 did not come to any definite conclusions on the issue of policing public meetings and stated that the report 'pointed out the three distinct ways of dealing with this issue, which they termed the Birmingham, the Liverpool and the Manchester police methods', adding that they were likely to differ again in London.⁴⁴⁷ He defended the Metropolitan Police adding, 'The police carried out their duties in connection with the Olympia meeting very fairly', declaring:

Is it not possible to secure that the method employed in one of these three cities which is the most effective for the purpose of the proper conduct of public meetings shall be adopted throughout the whole of the country? I cannot conceive how the Manchester Watch Committee can issue instructions to its police force on how they should conduct themselves in connection with public meetings, while different instructions are issued by the Birmingham and the Liverpool Watch Committees respectively.⁴⁴⁸

These contemporary issues relating to the difference in police practice in different provinces were neglected by Ewing and Gearty.

Although responsible for the Metropolitan Police, the Home Office did not have the same level of authority over County and Borough police forces, which were organised on a local basis. Gilmour's interpretation of police powers at public

⁴⁴⁶ TNA, MEPO 2/4319: Superintendent Hammersmith Station to DAC 1, 8 June 1934.

⁴⁴⁷ *HC Deb* 14 June 1934 vol 290 cc1973-74.

⁴⁴⁸ *Ibid.* cc1974.

meetings, and his belief that new legislation was required to allow police to enter public meetings, is reflected in the actions taken by the Metropolitan Police at Olympia.

There is a significant collection of incidents that justify the charge of partisan policing in the 1930s,⁴⁴⁹ but it is important to select evidence from a range of events that demonstrate a more balanced view. The varying approaches employed by different Constabularies in the 1930s regarding fascist and communist meetings help support the view that police practice in different regions upset this view of a pro-fascist police culture. This is most significantly noted by the Manchester City Police and the Manchester Watch Committee who showed very little tolerance of fascist activity or provocation.

A year before the Olympia meeting, Mosley spoke to a crowd of 3,000 in Manchester. The *Daily Mirror* reported that when ‘pandemonium broke out [the police entered] and insisted that every “Black Shirt” should leave the hall.’⁴⁵⁰ The fascist propaganda following the meeting predictably used the incident to criticise the police for protecting the communists who attempted to break up the meeting. The BUF newspaper *Blackshirt* reported:

Under the National Government, a British audience in the Free Trade Hall witnessed the disgraceful spectacle of Red rowdies protected by the police, and thereby permitted to break up a Fascist meeting by the agents of Government. The red flag was under police protection for the night. Even a Communist who attempted to pull down the Union Jack was saved from Fascist retaliation by the police, and was escorted from the hall without arrest or punishment. Reds carrying bludgeons and razors were not touched by the police.

⁴⁴⁹ See Ewing and Gearty, *The Struggle*, pp. 275-330 and Lewis, *Illusions of Grandeur*, p. 161.

⁴⁵⁰ *The Daily Mirror*, 13 March 1933.

The Manchester Watch Committee was also involved in stifling fascist activity by refusing to grant permission for a uniformed BUF procession before the prohibition of uniforms under s1 Public Order Act 1936.⁴⁵¹

Four months after Olympia, Mosley addressed a BUF meeting at Plymouth Drill Hall on 5 October 1934 and the police entered to restore order. The meeting which had an estimated audience of between 3,500 and 4,000 was stewarded by just 50 Blackshirts.⁴⁵² There was some disorder at the meeting and the *Western Evening Herald* reported on the 'Blackshirt's Outrageous Conduct at Plymouth'. The most serious disturbance occurred near the end of the meeting when the platform was rushed by 20 anti-fascists creating disorder and widespread fighting. The police subsequently entered the hall and restored order. Following the disorder, six fascists were summonsed with the charge of 'maliciously committing damage, injury and spoil to and upon a camera' belonging to the Western Morning News Company contrary to s14(1) Criminal Justice Administration Act 1914. Four of the fascists were charged, and a second charge of assault which related to a public meeting held outside Plymouth Pannier Market on the 11 October 1934, was also reflected in their sentence. Reports regarding the police practice at Plymouth varied. The *Times* stated that 'a large number of police who were present inside the hall took no part in the struggle'⁴⁵³ while the *Western Morning News* reported that order was restored by the police who were forced to enter the hall.⁴⁵⁴

In consequence of the criticism levelled at the Blackshirts' violent stewarding methods at the Olympia meeting, the BUF accepted the Metropolitan Police's

⁴⁵¹ See Chapter 2.

⁴⁵² *Western Morning News*, 16 Nov 1934.

⁴⁵³ *The Times*, 6 Oct 1934.

⁴⁵⁴ Gray, *Blackshirts in Devon*, p. 67.

request to station police officers within the premises of their next high profile meeting, held at the Albert Hall on 28 October 1934. Significantly, this meeting fell a month after the Bridgend magistrates had ruled in Sawkins favour, but a full seven months before the appeal at the Divisional Court. Mosley declared:

We said we certainly had no objection to their coming in. We are always delighted to see the police. They are very influential members of the community... I have now held twenty-five meetings in this country and at only one of these were the police present – and at one only did disorder occur. Nevertheless we are delighted to see the police here tonight.⁴⁵⁵

The correspondence between the Metropolitan Police and the BUF prior to the Albert Hall meeting details arrangements such as the BUF instructions given to the Blackshirt stewards which included the directives, 'All interrupters are to be warned twice before action is taken... [and] If it is considered necessary to remove anyone from the Hall, it must be done as quickly and quietly as possible, force not being used unless absolutely necessary.'⁴⁵⁶ The shortcomings of the Metropolitan Police, who did not enter the Olympia Hall despite evident breaches of the peace, were also addressed in the Albert Hall operation. The Commissioner's instructions included:

In the event of a disturbance inside the Hall, one of the plain clothes men [from Special Branch] will go out to the nearest squad of uniform men and bring them in... [and] If the uniform men outside see a man ejected from the Hall looking as if he has been "knocked about" they should go in immediately.⁴⁵⁷

The Times reported that the event 'passed off without any disturbance'.⁴⁵⁸

⁴⁵⁵ TNA, MEPO 2/3077, 'Transcript of Sir Oswald Mosley's speech in the Royal Albert Hall on Sunday 28th October, 1934.' P. 4.

⁴⁵⁶ TNA, MEPO 2/3077, 'British Union of Fascists: Instructions to Stewards'.

⁴⁵⁷ TNA, MEPO 2/3077, 'Notes made by the Commissioner at a meeting with ACA and ACC on 16.10.34.'

⁴⁵⁸ *The Times*, 29 Oct 1934.

Parallels can also be drawn between communist meetings in which stewards used violent methods of ejection. John Wynn initiated a private prosecution against a communist steward following a meeting at Ealing Town Hall held under the auspices of Ealing Communist and Labour Parties to discuss affairs in Spain. Giving evidence at Ealing Police Court, Wynn accused the stewards of excessive violence towards the interrupters declaring that one man was completely surrounded by stewards and was struck. Wynn, declaring his political impartiality, stated that he only became involved to assist a man who was being beaten following a melee of minor fights breaking out. Following his intervention, and the cry from the speaker to 'eject them all', he was repeatedly punched in the face and was thrown down a flight of stairs which knocked him unconscious. This incident demonstrates the excessive force used by a communist steward that was akin to the exorbitance of the Blackshirts. In this case, the charge of grievous bodily harm was dismissed, as Wynn was deemed to have obstructed the stewards in their duty.⁴⁵⁹ This judgment reveals that the magistrates in this case accepted a certain level of violence by stewards in order to protect their own meeting from disruption even when the violent stewarding was conducted by a communist.

9) The Public Order Act 1936

S6 Public Order Act amended the Public Meeting Act 1908, and provided the police with the power to arrest anyone who they reasonably suspected of acting in a disorderly manner in an attempt to break up a lawful public meeting and refused to give their name or address. This is described in more detail in Chapter 3 above. More controversially, s2(6) was believed by many to give the fascists licence to

⁴⁵⁹ *The Times*, 28 Sept 1936.

continue their violent stewarding methods. In general s2 is mandated to proscribe quasi-military organisations, yet subsection 6 provides that

Nothing in this section shall be construed as prohibiting the employment of a reasonable number of persons as stewards to assist in the preservation of order at any public meeting held upon private premises, or the making of arrangements for that purpose or the instruction of the persons to be so employed in their lawful duties as such stewards, or their being furnished with badges or other distinguishing signs.

During its progression through Parliament, Aneurin Bevan criticised the introduction of subclause 6 stating:

We are now re-importing into the Bill the possibility of an organised, disciplined and semi-military force... The right hon. Gentleman suggests that he has safeguarded himself by putting in the word "lawful" before "duties." I have had no legal training whatever, but it, seems to me that the importation of the word "lawful" does nothing at all to strengthen the language, because no steward could in the discharge of his duties do an unlawful thing.⁴⁶⁰

The fear that this could safeguard unnecessarily violent fascist stewarding was eased by Dingle Foot, the Liberal MP who was also a member of the NCCL and critic of fascism, who stated:

I think the insertion of the word "lawful" does something to avoid the precise evils which he has in mind, because if you have a group of stewards organised, not to use undue force, such as some of us think has been used in meetings in the last year or two; that would not come within the word "lawful."

The obligation of the organisers of meetings to appoint stewards was to ensure that police presence at meetings (especially political) was a last resort. Yet parameters had to be drawn in order that the violence at Olympia was not repeated. In defence of the sub-clause, Foot suggested that 'unlawful' would cover stewards who were armed with knuckledusters and continued:

⁴⁶⁰ *HC Deb*, 7 Dec 1936, vol 318 cc1674.

[B]y using the word "lawful" here, we are drawing a distinction between the legitimate use of stewards for removing an interrupter who refuses to be silent and in fact holds up the meeting, and stewards who use very different methods and quite unnecessary force.⁴⁶¹

10) Violent Stewarding following the Public Order Act

According to Sylvia Scaffardi of the NCCL, the only reported incident of violence at a fascist meeting following the Public Order Act was on 25 January 1937 at Hornsey Town Hall.⁴⁶² At this meeting, the fascist stewards allegedly ejected members of the audience in a violent manner.⁴⁶³ The NCCL applied pressure on the Government to launch an official enquiry, but on the rejection of this, they proceeded to collect statements from eyewitnesses to record their own unofficial enquiry. One of the assaulted audience members was Norman Boulton, a stockbroker's clerk. He had witnessed an assault on a man in the row behind who had requested permission to ask Mosley a personal question. This was granted, and he asked Mosley, 'Can you deny that your wife was a Jew?' A number of stewards then assaulted him striking him in the face and body. Following this assault, Boulton attempted to leave the hall and, on being questioned by a fascist steward, told him that he was going to fetch a policeman. He was subsequently struck in the face by the fascist steward, cutting his lip, and thrown out onto the pavement by four other fascists. He then reported that when he informed the Inspector in charge he refused to listen and 'told one of his subordinates to push me aside.'⁴⁶⁴

⁴⁶¹ *HC Deb*, 7 Dec 1936, vol 318 cc1676.

⁴⁶² The reduction in violence can be attributed to the growing prohibitions and conditions placed upon the BUF for the use of town and public halls across the country from 1935 onwards. See Benewick, *Political violence*, p. 265. For an example of conditions being placed upon the BUF, see MEPO 2/3083, 'British Union of Fascists: attempts to ensure free policing of their meetings'. Here, Wandsworth Borough Council applies a charge on the BUF for the employment of police constables to preserve order inside the venue under clause 7 of the conditions of letting Streatham Bath Hall.

⁴⁶³ Scaffardi, *Fire Under*, p. 164

⁴⁶⁴ HHC, U DCL/40/6, Letter from Witness to Town Clerk, 29 Jan 1937.

Another recorded assault at Hornsey Town Hall was upon E McKercher. In response to some fascists sitting behind him who shouted 'castrate the bastards', he asked them to moderate their language in the presence of ladies. After repeating his request a second time Mckercher was punched in the face, causing him a cut to his eyebrow and cheek and breaking his glasses. The lady next to him agreed to be a witness to the assault. When McKercher reported this to the Inspector outside the hall, he was informed that he could do nothing without the name and address of the fascist, and he could not assist him on finding the suspect as he could only go inside the hall if he was requested to do so.

By 1938, many Labour controlled Councils, including London County Council, had prevented the use of halls for BUF meetings. Copsey stated that this further helped push the BUF away from mainstream politics as they were left with little alternative than to conduct their activism on street corners and at open air meetings.⁴⁶⁵ By 1939, it was the fascists themselves which began to disrupt political meetings. In one instance, it was reported that 300 fascists had entered a Liberal meeting at York Hall, Bethnal Green on 16 February, allegedly by printing their own tickets, and proceeded to throw tomatoes and light bulbs at the speakers. A fight broke out and the police entered but only one arrest was made.⁴⁶⁶ A letter from the Town Clerk to the Home Secretary submitted that the fascist retaliation came following the rejection of the fascists' application to use the hall. He suggested that the fascists may have been of the opinion that if they 'are not allowed the use of York Hall, no other political party shall have the quiet user thereof' and warned of the potential for further disruption in the future.⁴⁶⁷ Home Office correspondence reveals that the police had already

⁴⁶⁵ Copsey, *Anti-Fascism in Britain*, p. 74.

⁴⁶⁶ *Western Morning News*, 17 Feb 1939.

⁴⁶⁷ TNA HO 45/24996, Letter from Bethnal Green Town Clerk to Samuel Hoare, 22 Feb 1939.

shared intelligence with the meetings organiser that the fascists may try to enter with forged tickets to create disorder. During the meeting the police were repeatedly called upon and they criticised the inadequate provisions that were made to keep order, stating that, 'the stewards were too few in number and too weak to deal with the situation.'⁴⁶⁸ Deputy Assistant Commissioner Ralph had instructed the Sub-Divisional Inspector to have 'a good number of police readily available to enter the hall if necessary.'⁴⁶⁹ Sub Divisional Inspector Robson's report reinforced the view that the police should not be present at meetings to act as stewards or to ensure the speaker receives a hearing. This was emphasised by police engagement with fascists who retaliated when they were asked to leave which resulted in the arrest of the fascist Reginald Hewitt. In addition, he did not take any action against hecklers when a breach of the peace was not imminent.⁴⁷⁰ This view was reinforced by the Superintendent's report who stated that the only time the police could legally intervene was during the incident involving Hewitt.⁴⁷¹

10) The BUF 'Peace Campaign' and Earl's Court 1939

In July 1939, the BUF hosted one last major rally at Earl's Court, London, where Mosley addressed a crowd of 15,000 to promote their peace campaign.⁴⁷² The timing of the Earl's Court meeting was particularly significant. In March that year, Hitler's military advance into Czechoslovakia had effectively torn up the Munich agreement which the Prime Minister Neville Chamberlain claimed would bring both 'peace with

⁴⁶⁸ TNA HO 45/24996, Draft letter from Geoffrey Lloyd to Sir Percy Harris MP who reveals information from a Metropolitan Police Report.

⁴⁶⁹ TNA, HO 45/24996, Letter from Carter of the Metropolitan Police to A Tudor of the Home Office, 23 Feb 1939.

⁴⁷⁰ HO 45/24996/9A, Report by Sub Divisional Inspector Robson, 21 Feb 1939.

⁴⁷¹ HO 45/24996/9A, Report by Superintendent Floyd Williams, 21 Feb 1939.

⁴⁷² C. Cross, *The Fascists in Britain*, Barrie and Rockliff (1961), p. 189. However, Mosley claimed an audience of 20,000 and Special Branch estimated just 11,000. Thurlow, *Fascism in Britain*, p. 86.

honour' and 'peace for our time'.⁴⁷³ This signalled the increased threat of British involvement in a European war. Thurlow noted that the that this development had the effect of both, changing the public's trust of Hitler and their perception of Nazism, whilst also showing Mosley as a potential leader, if only momentarily, that would keep Britain out of another war. The result was that although some BUF members left in protest, as the peace campaign was seen to put 'fascist loyalties above patriotic considerations', others 'flocked to the movement'.⁴⁷⁴

More importantly, from a public order perspective, the Earl's Court meeting did not attract any significant opposition. Copsey noted that militant opposition to Mosley had effectively dissipated as foreign events now took political prioritization.⁴⁷⁵ In addition to this, the far-Left also advocated peace. On 31 March 1939, when the danger of a German invasion of Poland became apparent, Communist MP George Gallacher declared:

The serious and important thing is that Members on this side of the House have continuously asserted that with collective security peace could be saved. The Prime Minister's policy has collapsed. Now he has led the country to the brink of war... I ask the Prime Minister to do a real service to the country and to give to those who believe in collective security an opportunity of forming a Government and saving the people of this country and the people of Europe from the menace of war.⁴⁷⁶

The British Government's reluctance to form a defensive pact with the Soviet Union over German aggression in East Europe was followed by the signing of the Nazi-Soviet pact in August 1939. Copsey argued that anti-fascist activism was now discarded by the CPGB who now accommodated the 'dictates of Soviet foreign

⁴⁷³ Andrew, *The Defence of the Realm*, p. 203.

⁴⁷⁴ Thurlow, *Fascism in Britain*, pp. 86-87.

⁴⁷⁵ Copsey, *Anti-Fascism in Britain*, p. 75.

⁴⁷⁶ *HC Deb*, 31 Mar 1939, vol 345 cc2418. It should be noted that some Labour MPs rejected Gallacher's inclusion of the Labour benches during this speech.

policy.⁴⁷⁷ Continued BUF activism in the months leading up to the War, such as the meeting at Earl's Court, as well as continued activism during the phoney war, therefore, did not provoke any organised opposition. There were exceptions, such as the attack on fascists in November 1939 who were travelling from a meeting in two double-decker buses, but Copsey pointed out that incidents like this 'proved exceptional'.⁴⁷⁸

11) Reflections on the Stewarding of Political Meetings in the Post-War era

In the years after the War, the newly formed fascist movements never reached the same scale of the BUF's meetings at the Albert Hall, Olympia or Earl's Court. Consequently, most fascist activism was performed on the streets. However, there were exceptions. For example, Mosley's official launch of Union Movement was held at Wilfred Street School, Victoria on 8 February 1948 and it was reported that 'several hundred police... protected the meeting'.⁴⁷⁹ Despite the incapacity of the far-right to hold large political rallies within hired premises, this did not prevent them from causing disturbances at other political meetings. A. K. Chesterton's League of Empire Royalists (LEL), a Conservative pressure group which formed in 1953, advocated for the preservation of the British Empire. They disowned political violence and terrorism and regarded the Conservatives within the Macmillan administration as traitors and gained publicity by heckling at high profile meetings.⁴⁸⁰ Their disruption of the Conservative Party Conference in Blackpool's Winter Gardens on 11 October 1958 is the most significant event regarding the stewarding at a political meeting in the years following the Second World War.

⁴⁷⁷ Copsey, *Anti-Fascism in Britain*, p. 75.

⁴⁷⁸ Ibid.

⁴⁷⁹ Dorril, *Blackshirt*, p. 569. Dorril's source is not referenced.

⁴⁸⁰ Thurlow, *Fascism in Britain*, p. 219.

A graphic description of the level of violence used to evict the hecklers was recorded in *The Spectator* by Taper.⁴⁸¹ He declared that as the Prime Minister Harold Macmillan rose to address the conference, a young man sounded a bugle three times from the balcony and cried, 'The League of Empire Loyalists sounds the retreat...' before being cut off and the sound of a scuffle being heard.⁴⁸² Taper described how about seven people carried the man out, three of whom wore the uniform of the Winter Gardens venue and the others were either stewards or delegates of the conference. He continued to state that:

The youth was either flung, or fell, to the ground as the group of which he was the centre came up the steps, and when he was lying on the ground he was kicked in the side. He was then dragged to his feet and propelled along, being repeatedly punched in the head and body as he went; two very violent blows in particular (delivered by a Tory delegate) landing on the nape of his neck... At no time did the youth offer any resistance.

Further hecklers were given similar treatment. Another youth who had his arms pinioned to his sides was attacked by a delegate who 'punched him repeatedly in the face.' The fourth interrupter was marched out of the hall after being held and punched by members of the audience. Taper followed and witnessed the youth being taken into a room which was guarded by two uniformed Winter Garden staff. He stated that the youth offered no resistance and was shouting 'I want the police, fetch the police' as he was escorted. Taper continued:

Sounds of violence could be heard from beyond the door. After a few minutes the door was opened from the inside and the group emerged. The boy's face was marked and running with blood, his shirt torn and hanging out, and he was obviously on the point of complete collapse. I later saw a pool of blood on the floor.

⁴⁸¹ Taper was the pseudonym of journalist Bernard Levin who wrote a regular column for *The Spectator* as their political correspondent.

⁴⁸² *The Spectator*, 17 Oct 1958, no. 6799. Accessed on 21 October 2013 from <http://archive.spectator.co.uk/page/17th-october-1958/6>

As with the responses to Olympia, the violence used by stewards split opinion. *The Times* did not report on the violence that was alleged to have been used and in referring to disorder only reported that the hecklers were ‘hustled from the gallery’ or ‘removed by attendants’.⁴⁸³ However, the letters to the editor which were published in the days following the event reveals more illuminating contemporary attitudes on the use of violence at political meetings.

A. K. Chesterton began the correspondence by criticising the violence used by the Conservative stewards. Unsurprisingly, his view on the stewarding of this meeting contradicted his description of the Blackshirts at Olympia. In his article ‘Olympia and the Jews’, Chesterton described the Blackshirt stewarding as the ‘action of British manhood in defending their mighty rally from being wrecked by the mob.’⁴⁸⁴ In his letter regarding the treatment of the LEL hecklers at the Winter Gardens, Chesterton highlighted that minimum force was not used, using the experience of Donald Griffin as an example. He also stated that the LEL activists had always left meetings quietly when they were asked.⁴⁸⁵

Lord Hailsham, chairman of the Conservative Party, declared that LEL members who entered the meeting ‘were trespassers *ab initio*’ as their tickets were obtained by ‘one device or another.’ He continued to state that the heckle of treason aimed at the Prime Minister was calculated to cause a breach of the peace. On pointing out the potential criminality of the interrupters, Hailsham does note that members of the audience were not justified in physically intervening with them as this went against Conservative principles. However, he does not pass any judgment on the stewards

⁴⁸³ *The Times*, 13 Oct 1958.

⁴⁸⁴ A. K. Chesterton, *Oswald Mosley: Portrait of a Leader* (1937).

⁴⁸⁵ It should be pointed out that Chesterton would not have seen a contradiction in his views between Olympia and Winter Gardens and would have likely advocated the BUF line that the force was needed to eject the hecklers who fought the stewards with weapons.

or the Winter Garden staff stating that his view of the audience was obstructed by the television lights.⁴⁸⁶ The Labour response by MP Barbara Castle demonstrated a continuity of the desire to uphold the liberties of free speech even though the hecklers in this case were from the far-Right. Castle pointed out that when four LEL members heckled her meeting they were only asked to leave when the audience got tired of their ‘childish interruptions... [she continued] What struck me at the time was how quietly these insult hurling gentlemen went as soon as they were told to leave.’⁴⁸⁷ Former Mosleyite, Noel Symington showed remarkable consistency with the BUF line at Olympia in his attitude regarding hecklers even though the LEL hecklers were also of the far-Right. He stated that as hecklers aim to get cheap publicity at the expense of the hosts, the ‘use of deterrent force then comes into perspective.’ He explicitly advocated that it ‘is high time that the suspension of free speech through organized hecklers was brought to an end.’ However, considering the opposition that Mosley’s Union Movement received at outdoor public meetings, this stance should be expected.⁴⁸⁸

The descriptions of the brutality used by the venue staff, stewards and delegates evoke comparisons to the fascist violence at Olympia. Yet, unlike Olympia, two of the victims at the Winter Gardens brought a charge of assault against two of the alleged offenders. Donald Griffin and Stanley Hulka of the LEL brought summonses against William Lynch, a member of staff at the Winter Gardens, and George Finley, a Conservative Party agent for assault. R. Gordon Clover QC, defending Finley, argued that the interrupter was unwilling to leave and Finley only used as much force

⁴⁸⁶ *The Times*, 18 Oct 1958.

⁴⁸⁷ *The Times*, 21 Oct 1958.

⁴⁸⁸ See chapter 3. Noel Symington stood as an Independent at Harborough during the 1950 General Election.

as necessary. The defence emphasized the deceitful character of Griffin and the deliberate aggravation he caused:

He gets into meetings using forged tickets, deliberately putting himself by dishonesty, trickery, and deception into situations where he can then proceed to behave with maximum amount of provocation and try to spoil meetings.⁴⁸⁹

Lynch also claimed that he did not hit the claimant or any other heckler. Bernard Levin, who wrote *The Spectator* article above under the pseudonym Taper, gave evidence of the 'needless severity by stewards' and Independent Television News reporter, Reginald Bosanquet described the treatment of the hecklers as 'excessively violent'.⁴⁹⁰ Despite this, the magistrates acquitted Lynch and Finley and ordered Griffin and Hulka to each pay £100 costs.

The legality of the actions of the stewards and Winter Garden staff has been questioned by Harry Street in consideration of the power of private citizens. Street argued that more facts needed to be ascertained in order to evaluate the legality of the ejections. Firstly, he stated that if a person had entered private property peaceably then no force could be used to eject them unless they failed to comply to a request to leave. Furthermore, it would need to be ascertained whether the Conservative Party were the occupiers of the premises or had just paid a fee for their use. Street argued that if they were not the occupiers then they had no power to eject anybody, and this could only be done by the owners of the Winter Gardens and their staff. Conversely, if the Conservative Party were the occupiers then their stewards had the power to eject hecklers, but not the employees or owners of the venue.⁴⁹¹ Following Streets argument, as both employees and stewards were

⁴⁸⁹ *The Times*, 2 Jun 1959.

⁴⁹⁰ P. Hitchens, *The Broken Compass: How British Politics Lost its Way*, Continuum (2009), p. 39.

⁴⁹¹ Street, *Freedom, the Individual and the Law*, p. 52.

involved with the ejections, either the stewards or the venue staff had acted unlawfully.

Remarkably, a quarter century after Olympia, the violent tactics employed by stewards, audience members and venue staff had been accepted in the courts. This demonstrated that there was still room for political violence within mainstream politics and it could still be justified and accepted within the compounds of the established conservative orthodoxy for the means of defending a political meeting. Despite Hailsham's criticism of the audience members who also allegedly assaulted the hecklers, the account that so many, including women, who did wilfully engage in violence demonstrated that a continuation of old attitudes towards political violence had not completely vanished. Pugh's argument that there was a common acceptance of the Blackshirt violence at Olympia by Conservatives as the pre-First World War attitudes to political violence only changed gradually can thus be extended, and shown that, even in the post-Second World War era they had not yet been diminished.⁴⁹²

12) **Conclusion**

Differences in the events at Olympia and Caerau demonstrate that they are not sufficiently compatible to suggest police partiality but they do highlight the scope of police discretion available when policing public meetings. The intelligence of the Glamorgan County Police of recent communist meetings gave them reasonable belief that their presence was required to prevent seditious speeches and the disorder that may follow. Although disorder could have been reasonably anticipated by the Metropolitan Police at Olympia, as it was the threat of organised communist

⁴⁹² Pugh, 'The National Government', p. 255.

interruption that was the likely to be the cause, it was the duty of the steward, and not the police, to control the meeting. This does not mean that, as the events of the evening unfolded, and the brutality that occurred became apparent to the police, that they were right not to enter the meeting. On the contrary, when it became apparent to the police that serious breaches of the peace were being committed inside, it became their duty to take control of the meeting and prevent further breaches of the peace as was the case at the BUF meetings at Manchester and Plymouth described above. Despite knowledge of previous fascist violence, it is possible that the police did not expect such an outrageous display of brutality by the Blackshirts, and were too apprehensive to deviate from their initial objective of keeping order outside the hall. The likelihood that the Police Superintendent in charge apprehended that police action could have inflamed the situation and caused a riot, should not be discounted either. Not only could police presence have provoked further disorder inside the meeting, but the 760 police on duty were also responsible for controlling an anti-fascist demonstration outside the Olympia hall. If a sufficient number of police had entered the meeting, it could have incensed the protest outside, leaving an inadequate number of police officers to control it.

The differences in the policing of these meetings were largely the result of their different understandings of their legal powers which stemmed from the ambiguity of the breach of the peace doctrine. There is no clear definition of what constitutes a breach of the peace and at a meeting on private premises the issue is even more clouded by the power of the stewards to evict members of the audience. Therefore, at what point can it be said that a breach of the peace has occurred when physical force is necessary to remove a member of the audience. One measure of the consistency between the incidents discussed is that police intervention at the BUF

meetings at Manchester and Plymouth and the Liberal meeting at Bethnal Green all occurred when the disorder became widespread and the stewards were unable to control it. However, when the stewards were able to contain order, albeit with the use of excessive force to remove the hecklers such as at Olympia, the communist meeting at Ealing Town Hall, and the Conservative Party conference at Blackpool in 1958, no police action was taken. Additionally, in the case of the communist meeting and the Conservative Party Conference, the stewards charged with assault were acquitted by the magistrates who recognised that the use of physical force was a necessary part of their power to fulfil their duty. These examples demonstrate a particular consistency in police practice across a varied spectrum of political activism.

Regardless of whether the police were right in not taking more affirmative action or not, the obvious injustice that was meted out to the interrupters at the hands of the Blackshirts dictates that more should have been done to protect them. But, the application of a legal lens has revealed that allegations of police partisanship are potentially misplaced and legal restrictions had a greater bearing on their tactics. The inconsistent application of police discretion at meetings held on private premises can also be better understood by their previous experience of different political groups or individuals, the diverse practice employed by provincial police forces, and the wide breach of the peace powers at their disposal.

Chapter 5

‘Bye, Bye, Blackshirt, have you lost your wool?’¹: Political Uniforms and Fascist Provocation

The uniform of Blackshirts is a lot of buffoonery and provocation in itself.²

1) Introduction

Political uniforms played a major part in organisations of the British far-Right in the 1920s and 1930s. Many groups were inspired by Benito Mussolini’s blackshirted Fascist Party, who formed an Italian government in 1922. This included the British Fascisti and the Imperial Fascist League. These movements adopted the Blackshirt uniform as well as many of Mussolini’s fascist principles, but they were relatively small, and it was not until Sir Oswald Mosley formed the British Union of Fascists in 1932, that the Blackshirt uniform took a more prominent place in British society. The BUF, who were also known as the Blackshirts, paraded in uniform along the streets of Britain in public processions and held public meetings. The Blackshirts were often seen as a nuisance which provoked violent confrontation from opponents, and their political activities regularly threatened public order. Yet, to what extent can the wearer of a political uniform be held responsible for the provocation of violence?

This chapter examines the role of the political uniform in the interwar years and the contemporary perceptions of the wider public. Mainstream political responses are analysed, including the views of the Metropolitan Police Commissioner and the

¹ K. Dower and W. Riddell, *Inside Britain: An Internal Scrapbook*, London (1937), p. 77, quoted from Gottlieb and Linehan, *The Culture of Fascism*, p. 114.

² Magistrate F. O. Langley at Old Street Police Court, London. *The Manchester Guardian*, 10 Oct 1936.

Home Secretary who both favoured the introduction of legislation to ban uniforms in 1934. In 1936, the Public Order Bill was introduced amidst significant debate in Parliament on the effect of clause 1, which prohibited the wearing of uniforms in connection with political objectives. Concerns were shared about the effect of clause 1 on civil liberties, and how uniforms should be defined in legislation. Following the enactment of the Public Order Act 1936, several members of the BUF defied the ban, and were subsequently arrested and tried at Magistrates Courts. As the Public Order Act did not include a definition of what constituted a uniform, these cases are significant as it became the Magistrates' role to interpret this ambiguous provision. The legacy of the infrequently utilised power under s1 is then examined with reference to the 1975 IRA case, *O'Moran v DPP*³ and the prosecution of members of the Ku Klux Klan in *R v Robert Edward Relf and others*.⁴ In conclusion, the charges summonsed under s1 are compared and the interpretation of what constituted a political uniform reviewed.

Coupland highlighted the cultural meaning of the Blackshirt uniform and addressed the contemporary responses to it. The uniform represented a militaristic force in which the BUF were criticised as this symbolism was provocative to the whole British public. The choice of wearing a uniform also embodied the flavour of European politics which seemed to contradict the patriotic message of the BUF. This foreign influence was commonly used to criticise the BUF as their uniform was referred to as 'alien elements making for conflict and disorder.'⁵ Coupland concluded that the black shirt added to the myths and dynamism of the BUF's political identity but argued that they 'were all dressed up with nowhere to go; dressed for a struggle that never

³ *O'Moran v DPP* [1975] QB 864 DC.

⁴ *R v Robert Edward Relf and others*, unreported, (1965) Rugby Magistrates Court.

⁵ Coupland, 'The Black Shirt in Britain', p. 106.

happened.’⁶ But more importantly for Coupland, he argued that the Blackshirt uniform more commonly conjured the image of the ‘alien menace in anti-fascist discourse’ which negated the most vociferous claim of the BUF, ‘Britain First’.⁷ Ewing and Gearty’s evaluation of the law relating to political uniforms highlighted the successful prosecutions of members of the BUF in the lower courts after the enactment of s1 Public Order Act 1936. Although critical of the time taken to address the issue of provocative uniforms, they praised the ‘carefully targeted and well prepared provisions’ in s1.⁸ This chapter assimilates cultural and legal implications of the Blackshirt uniform, evaluating responses to it since its inception into British society, and assesses the legacy of s1 which is still in force despite the movement that the provision was largely mandated to impede being proscribed in 1940.

2) The Function of the Blackshirt Uniform

The BUF was the largest and most organised fascist movement in Britain, their adoption of the Blackshirt uniform and its frequent visible presence on the public streets gave them both exposure and notoriety. Officers were distinguished by wearing a black shirt with black trousers, while unit leaders and men wore a black shirt with grey trousers. Women wore a black blouse with a grey skirt and black beret and they did not wear any lipstick or make-up.⁹ The black shirt itself was designed in the style of a fencing jacket. Mosley was a keen fencer and had also represented Britain internationally. Mosley claimed:

Soon our men developed the habit of cutting the shirt in the shape of a fencing-jacket, a kindly little tribute to my love of the sport; also this form had the practical advantage that it gave the opponent nothing to grasp, in

⁶ Ibid, p. 115.

⁷ Ibid.

⁸ Ewing and Gearty, *The Struggle*, p. 327

⁹ Pugh, ‘Hurrah for the Blackshirts!’, pp. 134,142.

particular no tie which he was wont to pull adroitly for purpose of strangulation.¹⁰

In official BUF literature, the value of the Blackshirt was attributed with numerous qualities. Oswald Mosley declared that the uniform and the spirit of those who wore it 'have been by far the biggest factors in the early success of Fascism.' He continued, 'Throughout modern Europe it has become the outward expression of manhood banded together in the iron resolve to save great nations from degeneration and decay.'¹¹ Despite the publicity that the uniform generated, its function was frequently aligned to fascist policy. For instance, Mosley stated that the uniform broke down class barriers as dressed in the same black shirt all men look alike, 'whether they be on the "dole" or whether they be prosperous managers of big businesses.'¹² This point was further stressed in a later publication as he claimed, 'Already the Blackshirt has achieved within our own ranks that classless unity which we will ultimately secure within the nation as a whole.'¹³ It was also asserted that the uniform, which is illustrated in figure 5.1, had a practical quality which enables the fascist to 'distinguish friend from foe in the fights which Red violence forces upon us.'¹⁴

In his autobiography, Mosley claimed that the adoption of a uniform was a vital necessity to combat organised disruption. He argued, 'Public meetings were our only way of putting over our case, and if our audiences were to hear it we must be prepared to fight for free speech.' In order to secure the continuation of the fascist movement, Mosley recognised that a distinctive dress needed to be worn in order for members to recognise each other:

¹⁰ Mosley, *My Life*, p. 253.

¹¹ O. Mosley, *Blackshirt Policy*, BUF Publications (1935) p. 16.

¹² *Daily Mirror*, 25 Aug 1933.

¹³ Mosley, *Blackshirt Policy*, p. 16.

¹⁴ *Ibid.*

A shirt is the easiest and cheapest garment for the purpose of recognition, and the shirts had to be paid for by the men themselves, most of whom were poor, some even being on the dole. Others had already worn coloured shirts for the same reason, but this no more made our movement Italian, or German, than wearing uniform turns an English army into a German army.¹⁵

Under this description, the Blackshirt uniform was a useful device of the Fascist Defence Force, which allowed them to easily identify each other at public meetings.

In a speech given at Manchester Free Trade Hall on 12 March 1933, Mosley stated that he did not want violence but insisted on attaining free speech as that was the reason why the Fascist Defence Force was present.¹⁶

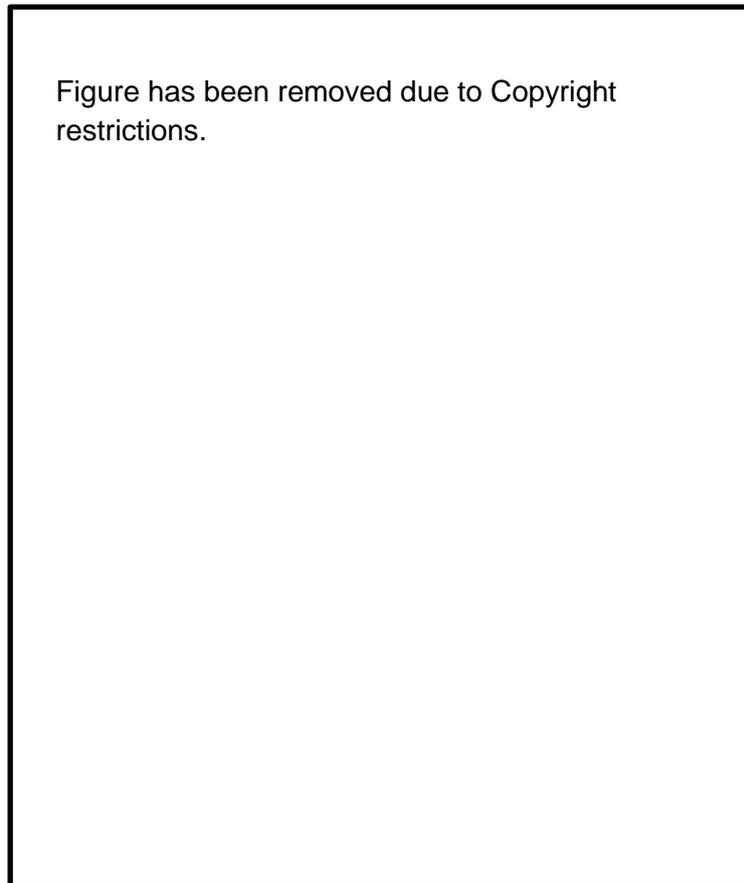


Figure 5.1 Oswald Mosley and the "I" Squad wearing the Blackshirt uniform in Hyde Park, 1934.

¹⁵ Mosley, *My Life*, p. 241.

¹⁶ *Ibid.*

The official function, or role of the political uniform, may only be comprehended by someone who had read or heard the official literature. To the wider public, the uniform would have represented something else. Contemporary legal commentator Ivor Jennings asserted that uniforms create a feeling of security to those that wear them, and feelings of insecurity in those who see them.¹⁷ If this psychological impact is true, then that insecurity could have harnessed the hostile and violent responses which the Blackshirts were subjected to. The uniform could then be seen as a provocation in itself, in addition to the provocative far-Right policies which were exhibited by the fascists.

Historian Philip Coupland's examination of the Blackshirt in Britain importantly highlighted the cultural responses to political uniform that informed contemporary society. They varied from those who disparaged the dangerous ideology behind the uniform, such as one critic who commented, 'the germs of political violence in contemporary England do not take much detecting', to more humorous responses such as P. G. Wodehouse who created the fictional would-be dictator, Roderick Spode, the leader of the Black Shorts. Coupland also highlighted the fears of contemporary writers who argued against satirising Mosley's fascist movement. E. M. Forster importantly criticised the English sense of humour that mocked Mosley as a 'figure of fun' referring to this as a 'dangerous conceit'. Similarly, J. B. Priestley commented on the danger of ridiculing the fascists which would turn 'comic storm troops into real storm troops'.¹⁸

The most significant response to the adoption of a political uniform by a British political movement was the foreign influence that it represented. Labour MP John

¹⁷ Jennings, 'Public Order', p. 177.

¹⁸ Coupland, 'The Black Shirt in Britain', p. 100-115.

Clynes highlighted this during the Public Order Bill debate in 1936, stating that uniform:

brings into our political activities alien elements making for conflict and disorder... Strange, indeed, it is to us that these new political forces and factors should have turned so readily to alien practices. They have acquired foreign symbols, foreign salutes, foreign names and foreign dress, and to do that is to head for trouble and the development of private armies, which I am certain all Members will not approve.

In his speeches, Mosley claimed that British fascism was unlike its European counterparts. At Barnstaple, North Devon, Mosley stated:

Mosleyism is a "British" thing, quite unlike its continental counterparts. There is no copying of the "foreigner" about our brave Blackshirts! If the Black Shirt itself is the Italian symbol of Fascism, it is only by curious coincidence that the Mosley movement happens to garb itself so!¹⁹

The uniform also added the theatrical display of a fascist meeting. Reporting the speech, the *North Devon Journal* described Mosley as 'film-star-like' and claimed that the audience 'appeared to enjoy the novel nature of this political show almost as much [as] it would enjoy, say, the "pictures."²⁰ Despite Mosley's efforts to distinguish the BUF from European fascism, addressing this issue in his speeches demonstrated that his audience needed to be convinced that 'Mosleyism' was unique to Britain. Adopting foreign fascist symbols, such as the Blackshirt uniform, only hindered Mosley's attempt to separate his movement from those in Europe.

3) Political Responses to the Blackshirt Uniform

As early as June 1933, the correlation between public disorder and political uniforms was raised in the House of Commons. Following recent political disturbances in the West End of London, Labour MP Rhys Davies, questioned Sir Douglas Hacking, the under-secretary for the Home Department, whether he would, 'consider the

¹⁹ *North Devon Journal*, 11 Oct 1934.

²⁰ *Ibid.*

desirability of suppressing all these organisations that are wearing uniforms and parading the streets?’ Hacking replied, ‘It may not always be desirable to prevent the wearing of uniforms. The wearing of uniform alone helps the police to find people guilty of any offence.’²¹ But any benefit that political uniforms gave the police was soon to be reversed. Following discussions with the Metropolitan Police Commissioner, Home Secretary Sir John Gilmour claimed, ‘recent developments have shown that any advantage in this direction is outweighed by the provocative effect of the wearing of such uniforms and the increasing number of street brawls which have occurred in consequence.’²² The association of political uniforms with political violence remained, and was frequently used in the mainstream political rhetoric.

In February 1934, Gilmour was asked if he would consider introducing legislation to prohibit the wearing of uniforms by political parties. He reported that this question had been engaging his serious consideration. He continued to state that incidents of disorder which the police attributed to the wearing of political uniforms had escalated from eleven incidents in the first six months of 1933 in the Metropolitan Police District, to no less than 22 disturbances in the last six months of the year.²³ This was the first in a series of questions aimed at the Home Secretary throughout 1934. Further questions came from Conservative MPs Vyvyan Adams,²⁴ Captain Sir Peter Macdonald²⁵ and Oswald Lewis,²⁶ Labour MPs John Tinker,²⁷ Jack Lawson²⁸ and

²¹ *HC Deb* 22 June 1933 vol 279 c920.

²² TNA HO 45/25386 ‘Wearing of Uniforms by Members of Political organisations’ .

²³ *HC Deb* 20 February 1934 vol 286 cc173-4.

²⁴ *HC Deb* 01 March 1934 vol 286 c1249; and *HC Deb* 19 April 1934 vol 288 cc1104-5; and *HC Deb* 02 May 1934 vol 289 cc311-2; and *HC Deb* 30 May 1934 vol 290 cc167-8; and *HC Deb* 30 October 1934 vol 293 c11.

²⁵ *HC Deb* 30 July 1934 vol 292 c2289.

²⁶ *HC Deb* 30 October 1934 vol 293 c11.

²⁷ *HC Deb* 09 April 1934 vol 288 cc14-5.

²⁸ *HC Deb* 16 May 1934 vol 289 cc1758-60; and *HC Deb* 16 May 1934 vol 289 cc1758-60.

William Thorne,²⁹ Liberal MP Robert Bernays,³⁰ and Scottish Unionist William Anstruther-Gray.³¹ Gilmour's reply to these questions frequently suggested that the matter had seriously engaged his attention, or that he had nothing further to add.

Despite the frequency of questions from all parties desiring the introduction of legislation to prohibit political uniforms, when a motion was made in May 1934 under the ten minute rule to introduce a Bill by Conservative Mr Oliver Locker-Lampson, it found little support. Locker-Lampson argued:

Violence breeds violence, and, if you want to turn England into a Communist camp, encourage Mosley to arm and dress and to break the law. Mosley breeds Bolshevism at every step, and he does it on purpose. Let his opportunities of appearing heroic be limited by a Bill like mine.³²

Conservative Earl Winterton objected to the Bill claiming that 'It would be quite impossible to define a political uniform for the purposes of this Bill.' His criticism continued, 'if this proposal were to be adopted, it would be the greatest possible aid and advertisement for Sir Oswald Mosley's movement... what a cheap ready-made martyrdom it would provide.'³³

In July 1934, Gilmour debated the existing law on public order with the Chief Constables of England and Wales. Although Gilmour was still cautious about introducing any legislation prohibiting political uniforms at this time, the Chief Constables overwhelmingly supported the idea in some form or another. Of the 16 questioned, only three Chief Constables did not support legislative action. The Chief Constable of Newcastle recognised that uniforms were the crux to the disorder but

²⁹ *HC Deb* 17 May 1934 vol 289 cc1922-3.

³⁰ *HC Deb* 16 May 1934 vol 289 cc1758-60.

³¹ *HC Deb* 11 June 1934 vol 290 cc1341-8 (question directed to Prime Minister) and *HC Deb* 30 October 1934 vol 293 c11.

³² *HC Deb* 16 May 1934 vol 289 cc1767.

³³ *HC Deb* 16 May 1934 vol 289 cc1770.

questioned the advisability of a ban.³⁴ In his following memorandum, Gilmour proposed:

That it should be an offence for any person, in pursuit of a political object, to form any body of persons into an organisation of a military character, by drill, or by the use of uniforms, or by the use of other military methods.³⁵

The Lord Advocate suggested that targeting the use of political uniforms may be treated as an aggravation and that he preferred the banning of private armies in support of political organisations.³⁶ By mid-July, a cross party conference was held, which included Home Secretary John Gilmour, Attorney General Sir Thomas Inskip, deputy Labour leader Clement Attlee, and Labour MP Sir Stafford Cripps. Although the proscription of political uniforms was not ruled out by this conference, and there was a great deal of sympathy towards such legislative measures, no further action was taken. It was reported in the *News Chronicle* that the current view of the Government was that the Blackshirt movement had 'shot its bolt, and that no special legislation is now necessary'.³⁷

By October 1934, a Public Order Bill³⁸ was drafted but it was not introduced to Parliament. Despite the provocation and disorder that was arguably caused by the wearing of political uniforms, this was omitted from the draft Bill. The wording of clause 1 was directed towards the prohibition of trained, or drilled political organisations, and was criticised by Metropolitan Police Commissioner Trenchard because it did not include the term 'uniform' in its provisions. Trenchard pointed out that while the wearing of a uniform makes for a military appearance and is

³⁴ TNA HO 45/25386.

³⁵ TNA HO 45/25386/40 'Memorandum by the Home Secretary' 11 July 1934.

³⁶ TNA HO 45/25386 'Observations by the Lord Advocate' 9 July 1934.

³⁷ HHC NCCL U/DCL38 Fascism Case 38. *News Chronicle* 18 July 1934, *Daily Herald* 24 July 1934.

³⁸ Full title, 'Draft of a Bill to Prohibit the maintenance of certain bodies of persons in connection with political organisations, to restrict and regulate processions, concentrations and public meetings and to facilitate the maintenance to order at meetings'; for other recommendations under this Bill see Chapter 2.

provocative, it could not be said that 'persons wearing uniform are necessarily "equipped for as to be capable of use as an instrument of force."³⁹ The Draft Public Order Bill was dated 2 October 1934 and Trenchard issued his criticisms of it to Sir Russell Scott, Permanent Under-Secretary at the Home Office. By the 30 October Gilmour was again questioned whether any legislation relating to political uniform was to be introduced. He replied that, 'This matter has continued to engage my attention but I regret that I am not in a position to state whether legislation on this subject will form a part of the Government's legislative programme for next Session.'⁴⁰ By late 1934, the urgency of legislating for the prohibition of political uniforms had demised in parallel to the ailing membership of the BUF. Gilmour's 'wait and see' policy before deciding to act was justified and the problem appeared to have been contained without unnecessarily repressive legislation.

By 1936, questions were again directed to the Home Secretary, now Sir John Simon, on the matter of prohibiting political uniforms. The problem of how to define uniform was again used in response.⁴¹ On 10 July 1936, during a debate about police expenditure and salaries, the issue of the BUF's Blackshirt uniform and the disorder associated with it were frequently made. In the course of the discussion, Simon was asked if there had been any success from the continent from countries that had prohibited uniforms. Simon replied:

I believe there is one continental country which attempted to suppress this trouble by legislation prohibiting uniforms and black shirts, and it is said that the result was that the followers of those people ceased to wear uniform, but shaved their moustaches so as to make that male ornament very closely

³⁹ TNA MEPO 3/2940, 18B Copy of Commissioner Trenchard's reply to Sir Russell Scott on the draft Bill, 8 Oct 1934.

⁴⁰ *HC Deb* 30 October 1934 vol 293 c11.

⁴¹ *HC Deb* 07 May 1936 vol 311 cc1894-5W (Response by Under Secretary of State for the Home Department Geoffrey Lloyd).

resemble that of the leader of the Nazi party in a different country on the Continent.⁴²

Despite the rising disorder that was associated with the BUF in 1936, the Home Office refused to be drawn into any commitment that any motion towards the prohibition of uniforms would be made. Without any legal restrictions on the wearing of political uniforms, by October 1936, the BUF donned a new uniform of an even more provocative character.

4) The Restructuring of the BUF: The Uniform becomes a Privilege

In January 1935, the BUF underwent a programme of restructuring. Effectively, Mosley split the BUF into the Blackshirt Organisation and the Political Organisation. He retained leadership of both, but appointed different officers to conduct each organisation. The main difference this had was to allow those who did not wear the Blackshirt uniform, to have a greater role in the movement. For those who did wear the uniform it became:

a privilege reserved for those who perform conspicuous service to the Movement and are prepared to give a substantial proportion of their time to this work. A Blackshirt must give a minimum of two evenings a week to the work of the Movement except in cases of special difficulty where one night a week may be temporarily accepted as adequate.⁴³

Historian David Lewis suggested the changes that were implemented in 1935 were designed to entice 'ideologically committed members', rather than a 'bunch of half-inspired, vaguely motivated, middle-class patriots' that had been the experience during the period of support from Lord Rothermere's newspaper empire.⁴⁴ In May 1935, further restructuring of the BUF was completed which gave more power back to the uniformed members in their respective districts. This time, three divisions were

⁴² *HC Deb* 10 July 1936 vol 314 cc1624.

⁴³ *Blackshirt*, No 91, 18 Jan 1935.

⁴⁴ Lewis, *Illusions of Grandeur*, p. 67.

created. The first and second division consisted of uniformed members who were distinguished by how much time they were prepared to devote to the movement. Those in the third division did not wear uniform and were only required to pay a monthly subscription. In October 1935, rewards for service to the BUF became available.

A member who sells three hundred and twenty copies of "The Blackshirt" in four weeks will be awarded a uniform black shirt or a belt... By selling four hundred copies within five weeks he will be entitled to a pair of uniform trousers; selling seven hundred and twenty copies in nine weeks he will earn a uniform mackintosh; and if he sells eight hundred copies in ten weeks he can have either a pair of boots, a pair of breeches, or a uniform greatcoat.⁴⁵

By 1936, the influence of German Nazism began to eclipse the BUF's original inspiration from Mussolini's brand of fascism. The Roman 'fasces', which symbolised unity and strength, was replaced by the lightening flash within a circle, which represented the flash of action within the circle of unity, and was styled on the swastika. The BUF also changed their name to the British Union of Fascists and National Socialists. This simple change demonstrated the influence of Hitler's National Socialist German Workers Party. The uniform also took a more militarised form akin to the Nazi SS, and is illustrated in figure 5.2. In reflection, Mosley conceded that the change in uniform style hindered their political ambitions. He declared, 'My mistake was in allowing the development of a full military uniform for certain men who qualified to wear it'. The qualification was to commit five nights a week of service and to sell a requisite number of *Action* newspapers. Mosley claimed that he wore the new uniform himself to encourage others to devote time to the movement. He reflected:

It was an error and a dereliction of duty, for I should have known that while we could have got away with the simple black shirt, the uniform made us

⁴⁵ *Blackshirt*, No 129, 11 Oct 1935.

much too military in appearance and would create prejudice. The old soldier in me got the better of the politician.⁴⁶

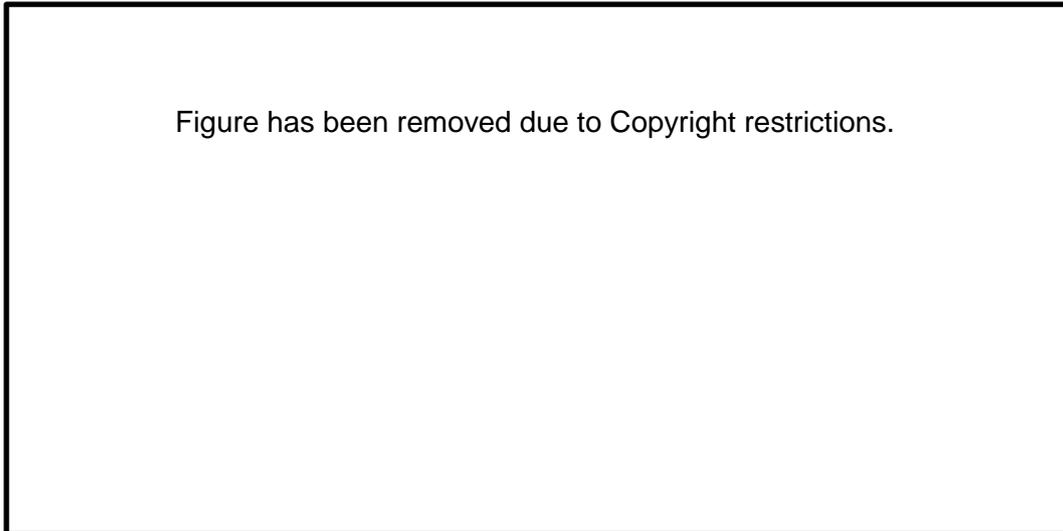


Figure 5.2 Mosley wearing the new military styled uniform in 1936.

5) Regional Responses to the Blackshirt Uniform

In July 1936, the BUF were denied an application to march in procession by the Manchester Watch Committee on account of the provocative nature of the fascists' uniforms. In response to this rejection, the BUF publically reapplied stating:

In order to test whether the Watch Committee is animated by a genuine objection to political uniforms or by political prejudice against Fascism, I now make application for permission for a march of our members to the meeting in everyday clothes. They will, of course, be accompanied by bands and banners, which have also been used by socialist processions through Manchester and other cities.⁴⁷

Furthermore, when the BUF march was permitted, the route was stipulated by the Chief Constable. The Manchester Watch Committee was inevitably condemned by the fascist press which claimed that the wearing of the uniform was an essential component of maintaining public order, as it distinguished the BUF from their opponents declaring:

⁴⁶ Mosley, *My Life*, p. 253.

⁴⁷ *Manchester Guardian*, 17 July 1936.

...the work of the police will be greatly increased, since our members are determined to abide by the law and the Red Hebrew front is determined to violate the law. In these circumstances every distinction which enables the orderly party to be recognised is a help to the Law, and every circumstance which renders difficult distinction between those who propose to hold a meeting and those who have resolved to smash it is an embarrassment to the police.⁴⁸

The effectiveness of this imposed condition, which essentially banned the wearing of the Blackshirt uniform for the procession on 19 July 1936, was subject to conflicting reports. The *Manchester Guardian* led with the headline, 'Disorder at Fascist Rally' and described scenes in which numerous stones were thrown and sporadic fighting broke out. The police created the beginning of a stampede amongst the dense crowd as they attempted to reach the fighting, women with babies were removed to a safe distance, and there were eight arrests.⁴⁹ *The Times* reported that the demonstration, 'which had given the authorities some cause for anxiety beforehand, passed off fairly peaceably', and made a brief reference to a stone being thrown and some trouble in front of the fascist platform where some of the BUF's opponents, 'who shouted themselves hoarse and raised their clenched fists whenever the Fascists gave the Hitler salute.'⁵⁰ The Assistant Chief Constable claimed that the success of keeping order at the demonstration was because without their uniform, the fascists ceased to be provocative.⁵¹ Following questions in the Commons, Home Secretary Sir John Simon could not assert whether the conditions imposed on the BUF march were made with any legal authority or not.⁵² However, if any challenge was made to the

⁴⁸ *The Blackshirt*, 18 July 1936.

⁴⁹ *The Manchester Guardian*, 20 July 1936.

⁵⁰ *The Times*, 20 Jul 1936.

⁵¹ S. Cullen, 'Political Violence: The Case of the British Union of Fascists', *Journal of Contemporary History*, vol. 28 (1993), p. 256, quoting from HO 144/21061, 692, 242/172.

⁵² *HC Deb* 27 July 1936 vol 315 cc1095-6.

decision, Ewing and Gearty suggested that, 'the police could have relied if they had chosen to do so on their breach of the peace jurisdiction.'⁵³

Mosley's response to the disorder emphasised that the organised disruption by the socialist and communist element 'is exactly the same whether we are in uniform or not.' His statement, which was published in the *Manchester Guardian*, then described occasions where larger BUF demonstrations, in which their Blackshirt uniform was worn, had generated less opposition and disorder than their plain clothed march in Manchester.⁵⁴

Influenced by the Manchester Watch Committee and recent disorder at a BUF meeting in Hull addressed by Mosley, the Hull Watch Committee's chairman, Alderman Stark, issued a statement that there would be no more uniforms worn at meetings in the city. There was also a motion put forward by Councillor Nicholson to prohibit fascist meetings altogether. However, this was discarded by Stark, who replied that the decision to prohibit meetings rested entirely with the Chief Constable on grounds of an anticipated breach of the peace, and that the Watch Committee, the Town Clerk and the Home Secretary had nothing to do with such a matter.⁵⁵ Nevertheless, despite the statement on uniforms, Blackshirts continued to be politically active in Hull. They regularly met at Paragon Square and reportedly insulted people and caused obstruction. It was recorded that the Blackshirts also targeted anti-fascists and Jews with anonymous postcards threatening that they were 'marked men', and it was also alleged that insulting placards were pasted onto Jewish owned shops.

⁵³ Ewing and Gearty, *The Struggle*, p. 306 n150.

⁵⁴ *Ibid.*

⁵⁵ *The Daily Mail (Hull)*, 29 July 1936.

Although there had been an increase in Blackshirt related violence in Hull, and Stark warned that there was 'a first class riot brewing', the Watch Committee conceded that they were powerless to prohibit the Blackshirt uniform.⁵⁶ The Committee admitted they were misled by media reports which declared that the Manchester Watch Committee prohibited the uniform. In fact, the BUF had agreed to march without their uniform in Manchester following negotiations with the Manchester Watch Committee. Stark announced to the committee that 'there was no law to prevent any organisation from holding meetings in uniform whether they were postmen, Salvation Army, Boy Scouts, Fascists or anybody, but the law did state distinctly that a disorderly meeting could be dealt with.'⁵⁷ This admission stressed the constraints encountered by regional authorities in their struggle against political violence and public disorder that was frequently associated with the wearing of political uniforms. It was not until after the disorder in Cable Street on 4 October that national attention had been resurrected and again focused on the pressing for a ban on political uniforms.

6) The Repercussions of Cable Street

Reports following the disorder at Cable Street⁵⁸ frequently commented on the military styled uniform worn by Oswald Mosley and other fascists. The *Western Morning News* recorded:

Sir Oswald Mosley... yesterday wore the new uniform – a black military-cut jacket, grey riding breeches, and jack boots. He had a black peaked military hat and a red armband. Many of the Fascists on parade wore similar uniform.⁵⁹

⁵⁶ Ibid. 29 Sept 1936.

⁵⁷ Ibid.

⁵⁸ See Chapter 2.

⁵⁹ *Western Morning News*, 5 Oct 1936.

The scale of the violence at Cable Street was unprecedented in terms of BUF related disorder. In combination with this, the escalating anti-Jewish attacks in East London and the new uniform, which was even more militarised and provocative, forced the Home Office to take action. There was renewed intensification over political uniforms and whether legislation should be introduced to prohibit them. Game admitted that the police were not equipped to deal with the situation and asked the Cabinet to introduce legislation to prohibit political uniforms and political defence corps, and also to grant extra powers to prohibit marching.⁶⁰

The Labour Party Conference in Edinburgh on 6 October 1936 used the event to demand the prohibition of political uniforms. Joseph Toole of Manchester seconded the motion for prohibition, highlighting the BUF's recent plain clothed march stating:

Mosley came to Manchester a month ago. We allowed his procession, but the Watch Committee insisted that uniforms should not be worn. I moved that myself, because I wanted the public to see what Fascists were like without Uniforms. (Laughter.) And what a motley crew they were. (Laughter.)⁶¹

Blackshirt propaganda defended the function of the uniform as a tool which helped preserve discipline and order and ridiculed the suggestion that it was provocative. At a luncheon in Manchester, attended by 200 Lancashire businessmen, Mosley used the platform to criticise demands for political uniforms to be prohibited. He questioned:

Are we really to have it laid down in Great Britain that a man might not wear the clothes he wishes to wear? [adding] a Socialist has no more right to throw a brick at a fascist whose clothes he dislikes than I have to throw one at Alderman Joseph Toole because I find his appearance unpleasant and provocative...⁶²

⁶⁰ Pugh, 'Hurrah for the Blackshirts!', p. 173 see TNA, HO 144/20159.

⁶¹ *The Manchester Guardian*, 6 Oct 1936.

⁶² *Action*, 17 October 1936, p. 6.

There were also frequent questions directed towards the Home Secretary in the House of Commons, enquiring whether legislation to prohibit uniforms would be introduced. These questions were not just instigated by the political Left. Frustration at Sir John Simon's hesitancy was highlighted by Conservative MP for Leeds West, Mr Vyvyan Adams. After he received an unsatisfactory answer to his question on political uniforms he stated, 'May we have an early answer about these uniforms as we have now had about three years to consider how to deal with these dangerous lunatics?'⁶³ In the Police Courts, Magistrates could also use their discretion in connecting the wearing of the Blackshirt uniform with provocation. For example, in October 1936, Woolf Bensusan was accused of using insulting words and behaviour towards a fascist. In his judgment, Magistrate, Mr F. O. Langley stated, 'The existence of these Blackshirts is a provocation. I am not going to punish you because I think there was provocation.'⁶⁴ The pressure finally paid off and on 3 November 1936, the Public Order Bill was introduced, with a clause to prohibit political uniforms.

7) S1 Public Order Act 1936

When the Home Secretary Sir John Simon introduced clause 1 Public Order Bill to Parliament, which prohibited the wearing of political uniform, he declared that:

It is the unanimous view of the chief officers of police in the areas principally affected that the wearing of political uniforms is a source of special provocation, and testimony to the same effect has been offered to me at the Home Office by a number of deputations.⁶⁵

The words, 'Uniform signifying association with any political organisation or with the promotion of any political object' were carefully chosen, Simon stated that this would

⁶³ *HC Deb* 29 October 1936 vol 316 c7.

⁶⁴ *The Manchester Guardian*, 10 Oct 1936.

⁶⁵ *HC Deb* 16 November 1936 vol 317 cc1351.

exclude the uniform of the Salvation Army, industrial organisations, benefit clubs, Boy Scouts and the Church Lads' Brigade.

Clause 1 was questioned by Mr Turton who stated, 'To-day any man may go about in any public place in any attire, so long as it is decent and is not female attire' and questioned the advisability of adding any further restrictions on what people may wear, especially as no definition could be offered.⁶⁶ He moved that the clause should leave out the phrase, 'in any public place or' as he believed the Government were 'striking at a lot of people who are quite inoffensive and whom it is quite unnecessary to brand as criminals.' He mentioned the green shirts of the Social Credit Party, who were law abiding and should not fear the Attorney General when they walked out of their house.⁶⁷

Simon made it clear that the clause would not carry a definition of the term uniform, as this would create potential loopholes that could be exploited. However, without definition, it was unclear whether the Orangemen could continue their processions and whether the kilt could still be worn. Labour MP, Andrew MacLaren, also questioned that innocent individuals could find themselves committing a criminal act, 'If there is anything a Scotsman likes to do south of the Tweed it is to wear a kilt...We know the intention behind the Bill.'⁶⁸ This intimation towards the BUF was previously made explicit by Labour MP, James Lovat-Fraser, who declared that 'I hope that the action that we take to-night may crush Sir Oswald Mosley's movement.' Conservative, Edward Fleming, stated that without a description of what a political

⁶⁶ Ibid. at cc1426.

⁶⁷ *HC Deb* 23 November 1936 vol 318 cc49-50.

⁶⁸ Ibid. at cc51.

uniform was then he would be driven to the same conclusion as Mr Lovat-Fraser that, 'the real reason for this Clause is to suppress the Fascists'.⁶⁹

Fleming revealed to the House that he had many fascist friends, and when the other Honourable Members expressed their surprise, he replied that many of them were once Conservatives, and that some were even Labour men and Communists. Without a definition of uniform, he could see that his friends appearing before Magistrates in Bolton would be treated differently from those in Manchester. He argued that there was no need for clause 1, and that Parliament should bring in a Bill that was more explicitly directed that would 'crush them entirely as a political organisation'.⁷⁰

S1(1) Public Order Act 1936, which became law on 1 January 1937, states, 'any person who in any public place or at any public meeting wears uniform signifying his association with any political organisation or with the promotion of any political object shall be guilty of an offence'. Exceptions are permitted on occasion of ceremonial, anniversary, or other special occasion, if the Chief Constable and the Secretary of State are satisfied that it will not be likely to involve any risk of public disorder. S1(2) confirms that the consent of the Attorney General is required for prosecutions to be instigated.

This section caused controversy on two fronts. Firstly, it would affect other political organisations that were law abiding and did not threaten public order. Members of the Social Credit Party (SCP), recognisable by their green shirts, were the most noticeable victims of the new legislation. Other, now prohibited uniforms included, the blue shirts of the Kensington Fascists, the grey shirts of the United Empire

⁶⁹ Ibid. at cc53.

⁷⁰ Ibid. at cc57.

Fascist Party, the red shirts of the Independent Labour Party Guild of Youth, the brown or Khaki shirts of Communist Youth organisations, and the blue and white shirts used by Jewish anti-fascist organisations.⁷¹ As s1 referred only to political uniforms, social and religious groups such as the Boy Scouts and the Salvation Army were omitted from the proscription. The only exception made in the Act was that uniforms could be worn on special occasions which allowed the Ulster Orangemen to wear their uniforms for ceremonial processions. As no definition of 'political uniform' was offered in the Act, it was controversially left for the Courts to interpret the meaning of this term. The implications of this are, if a political uniform cannot be defined in legislation, how does a potential offender know whether his dress is considered to be prohibited or not?

8) S1 Public Order Act: Early Prosecutions

The BUF response to the new legislation demonstrated both their obedience to the law and their desire to circumvent it. A BUF cartoon (illustrated in figure 5.3), which appeared in *Blackshirt*, reveals a fascist hanging up his uniform on 1 January 1937, demonstrating his respect of the law. The caption, 'Till the Day' emphasises the anticipated coming of a fascist state when the Blackshirt will again be worn. The BUF also submitted a request to the police to bring a test case against them so it could be ascertained whether a black shirt and tie worn with a regular suit would constitute an offence under the Act. They also issued a statement which declared, 'It is incorrect to say that we either challenge or wish to defy the law. Our desire is, and always has

⁷¹ *Meetings, Uniforms and Public Order*, (a Guide to the Public Order Act 1936). London: Jordon and Sons, 1937, p. 7.

been, to conform with the law.⁷² Yet, in practice, attempts were made to elude the proscription.

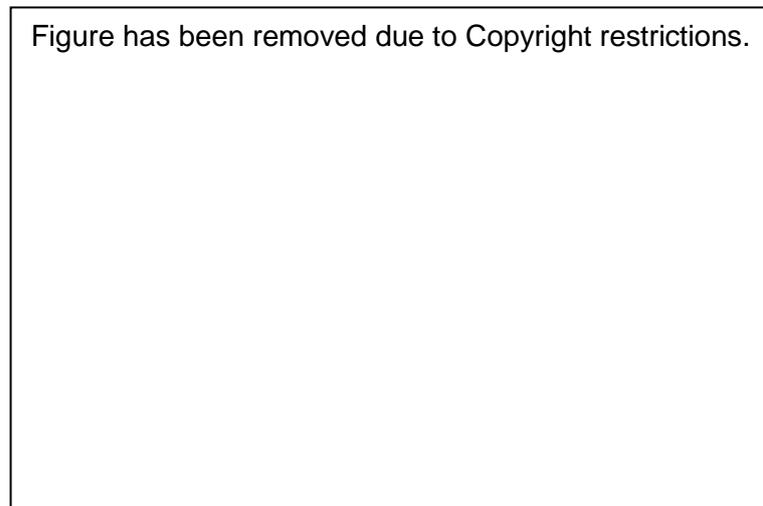


Figure 5.3 Cartoon showing BUF response to Public Order Act 1936.⁷³

In January 1937, there were two prominent s1 prosecutions of BUF members. The different defences used demonstrate the way fascists sought loopholes in the new legislation. The first to be prosecuted was William Wood, a BUF paper seller, who was arrested on 2 January 1937 in Leeds. He was selling the newspapers, *Action* and *Blackshirt*, whilst wearing 'a peaked cap with a leather chin strap, and on the cap were two badges commonly associated with the BUF. He was also wearing a black shirt and a black tie.'⁷⁴ When Wood was approached by a police officer who asked him if he knew that wearing political uniforms was now an offence, he replied that he was told by his employers, the proprietors of the paper *Action*, 'that if he wore the uniform cap while he was selling the papers he was in the same position as the ordinary vendors of newspapers.'⁷⁵ In *R v Wood*⁷⁶ at Leeds Police Court, it was admitted by the police during cross-examination by Frederick Lawton, that other

⁷² *Nottingham Evening Post*, 2 Jan 1937.

⁷³ *Blackshirt*, 2 Jan 1937, p. 1.

⁷⁴ *The Journal of Criminal Law*, p. 451.

⁷⁵ *The Journal of Criminal Law*, p. 452.

⁷⁶ *R v Wood* (1937) 81 Sol Jo 108.

newspaper vendors also wore caps of a similar design. Defending, Lawton submitted that it was 'not a uniform, but a livery such as is worn by sellers of newspapers in all the big centres' and highlighted that the qualification to wear it was to sell papers to the value of 2s 2d per week for a period of one month.⁷⁷ It was argued by the prosecution that although the defendant was not attired in the full BUF uniform, the items that he was wearing were complete enough to signify his association with the fascist party, submitting, 'It was not necessary that a uniform should be entirely complete to bring it within the mischief of section 1.'⁷⁸ The prosecutor described the Act as 'vaguely nebulous' claiming that 'the police and other people were anxious to know what the exact position was.'⁷⁹

The Stipendiary Magistrate stressed that he did not want to lay down any general principles in regard to the law, declaring that all cases must be treated on their own merits. Regarding the dress worn by Wood, he was of the opinion that it could properly be described as a uniform within the meaning of the Act, stating, "I think that the average person who had seen him would have said not 'Oh, there's a man representing the Action Press,' but 'Oh, there's a Fascist.'⁸⁰ Although the maximum punishment for a s1 offence was three months imprisonment and a fine of £50, Wood was fined 40 shillings as the Stipendiary Magistrate stated that as it was a test case he would only impose a nominal penalty.

Barrister Frederick Lawton, who was later to become Lord Chief Justice, was already an admirer of fascism before he became associated with the BUF, founding the Cambridge University Fascist Association as an undergraduate. He was called to the

⁷⁷ *The Daily Mail (Hull)*, 27 Jan 1937.

⁷⁸ *Justice of the Peace and Local Government Review*, vol. CI, no. 6 (6 Feb 1937) p. 90.

⁷⁹ *Nottingham Evening Post*, 27 Jan 1937.

⁸⁰ *The Daily Mail (Hull)*, 27 Jan 1937.

Bar by Inner Temple in 1935 and later that year watched Mosley, conducting his own case, sue John Marchbanks for slander at the King's Bench Division. After becoming acquainted with Mosley there, he joined the BUF, and was later named as a prospective parliamentary candidate for the BUF in 1936. From then on, Mosley frequently employed Lawton to defend BUF members in court, as well as help set up a commercial radio station in Germany, an enterprise that Mosley hoped would aid the BUF's ailing financial situation.⁸¹ Following the failed 'livery' defence in *R v Wood*, Lawton was called upon to defend four Blackshirts who had been arrested for the s1 offence in Hull.

In *R v Charnley*,⁸² Sidney Charnley, Eric Webster, John Charnley and Peter Smith were summonsed before the Hull Stipendiary Magistrate on 29 January 1937 for wearing a uniform signifying their association with the BUF on 7 January at a public meeting. Sidney Charnley, the meeting's chairman, was described as wearing a 'dark navy blue woollen pull-over, black trousers, black belt with the Fascist badge on the buckle, and also a red brassard on the left arm.'⁸³ His brother John was similarly dressed and Smith wore a black jacket and a red armband. For the defence it was argued that the garments worn constituted ordinary clothing and there was no intention of them being associated with a political object. The only items purchased from the same source were the armlets and belts. As for these items, Lawton argued that a distinctive mark such as an armlet may be considered part of a uniform but it was not a uniform in itself. He quoted the Attorney General, who stated during the House of Commons debates on clause 1, that the wearing of a distinctive tie would not constitute an offence under the Act, arguing that the object of the Act was to

⁸¹ A. De Courcy, *Diana Mosley*, Chatto and Windus (2003), p. 183.

⁸² *R v Charnley* (1937) 81 Sol Jo 108.

⁸³ *The Journal of Criminal Law*, vol. 1, no. 3, 1937. p. 453.

prevent the wearing of a complete outfit, stating, 'If they wanted to stop the wearing of badges they could have said so.'⁸⁴

In giving judgment, the Magistrate dismissed this argument, stating that if uniform meant a complete outfit, then Parliament would have stated so. Therefore, uniform must mean something less than that, yet, like the Leeds Magistrate before him, declared that he would not be drawn into defining the limits upon which a uniform could be described. The defendants were said to have been honest in their replies in trying to remain lawful, and the Magistrate believed that they were not deliberately attempting to break the law. They were 'bound over on their own recognizances each in £5 to be of good behaviour for six months and order to pay 10s each towards the costs of prosecution, with the exception of Smith, who was ordered to pay 5s.'⁸⁵ Whether the Magistrate's view that the Blackshirts' intentions were honest was correct or not, the fascists were testing the boundaries of the new law trying to exploit its vagueness. The lack of a definition only proved to strengthen the position of the Magistrates to implement a wide interpretation of the meaning of 'political uniform'.

The attire described in *R v Wood* was very similar to the militaristic uniform worn by the BUF before the Public Order Act, but the clothes described in *R v Charnley*, which were claimed to be normal everyday clothes, were still considered to be political uniforms because of the various armbands and badges worn. Mosley continued to wear a black shirt after the Act and even challenged the Government to prosecute him at a speech delivered at Hornsey Town Hall, London, on 25 January 1937. In his speech, Mosley accused the police of bullying and blackmail, alleging

⁸⁴ *The Times*, 30 Jan 1937.

⁸⁵ *The Times*, 30 Jan 1937.

that they frequently took the names and addresses of BUF members who wore a plain black shirt, and threatened them with prosecution. He used this platform to forbid his followers to wear a black shirt in order to stop this intimidation. His black shirt was worn under a light coloured suit and there were no visible badges or armlets on display to signify association with any political party. Therefore, no prosecution was ever likely. Mosley used this sign of defiance to intensify his rhetoric against the Public Order Act, which he described as 'grossly partisan' and 'designed by our opponents to damage and to impede our organisation'.⁸⁶

In contrast to the successful prosecutions of the uniformed fascists, the Magistrates' judgments in two cases involving the green shirted members of the SCP had quite a different outcome. The first was in Luton, where three members were charged with the s1 offence with the approval of the Attorney General. *The Times* recorded that, 'The criterion appeared to be whether or not a collection of persons dressed in similar articles of distinctive apparel gave a reasonable onlooker the appearance of persons dressed in uniform.'⁸⁷ Although the defendants wore their distinctive green shirt and tie, one wore them with an ordinary suit, and others with either a mackintosh or overcoat. However, they all wore armlets with the emblem of their party on them. The solicitor for the defence read the definition of the word 'uniform' from the *New English Dictionary* and argued that, 'it was perfectly obvious that they were not wearing a "distinctive dress of the same pattern, colour and appearance."⁸⁸ The Bench dismissed the case.

On 16 June 1937, another member of the SCP was summonsed under s1 Public Order Act 1936. He wore 'a light green shirt, green collar, green tie (the tie bearing

⁸⁶ *Action*, 30 Jan 1937.

⁸⁷ *The Times*, 3 June 1937.

⁸⁸ *Ibid.*

an inscription or initials), a black belt, grey flannel trousers, and a green armlet, the last marked with a “double K” in white.’⁸⁹ For the defence, it was argued that his green shirt was only revealed because he removed his coat because of the warm weather, and his shirt was light green, rather than the dark green that was associated with the party. Further, the defendant was not wearing a beret which was part of the usual uniform of the SCP, and the shirt and tie were quite ‘ordinary’ and ones ‘that anyone might buy.’⁹⁰ Although the Magistrate, Paul Bennett, held that the shirt, tie and armlet constituted a uniform, *The Times* reported that he ‘did not take a serious view of that case’ and he dismissed the summons under the Probation of Offenders Act on payment by the defendant of £5 5s. costs.

The discretion utilised by the Magistrates in these cases demonstrates that the members of the SCP were treated more leniently than the Blackshirts who violated s1, despite the similarities in the garments which constituted their uniform. This was also reflected in the Parliamentary debates which implicitly stated that the main function of the uniform ban was to counter the provocation caused by the BUF, and to prevent other extremist bodies creating uniformed divisions themselves. A certain amount of sympathy had been imparted for members of the SCP, who were not considered to be a provocation or a source of political violence by Parliament, but would have their liberty to dress in uniform curtailed. The Blackshirts did experience a higher conviction rate, but the sentencing consistently reflected a temperate view of the offence by the Magistrates. A further Blackshirt conviction in August 1937, validates this view, when Reginald Dawson was fined £5 and ordered to pay £2 2s

⁸⁹ *The Times*, 17 June 1937.

⁹⁰ *Ibid.* Also, the ‘Double K’ was likely to stand for ‘Kibbo Kift’ which was a youth organisation founded in 1921 by John Hargrave who was a former Commissioner of Baden-Powell’s boy scout movement. Hargrave was later influenced by Major C. H. Douglas’ theories of social credit and adopted these ideas into the official policy of his movement which became the Greenshirt Movement for Social Credit in 1931, and then Social Credit Party of Great Britain in 1935.

costs at Hampstead. The full punishment available to the Magistrates on summary conviction under s7(2) was imprisonment for a term not exceeding three months, a fine not exceeding £50, or both. Dawson was dressed in a 'black stockinette jersey' with a polo collar two inches deep and a fascist badge on the left hand side, grey trousers, and a wide black leather belt with a chromium plated buckle consisting of 'slots which appeared to have been used for holding a badge'.⁹¹ During Dawson's public address at Carlingford Road, Hampstead, he responded to a heckler from the crowd who commented on his uniform by stating, 'All right. If you don't know what a uniform is, don't show your ignorance.' The clothes worn by Dawson were the same as those worn by certain members of the BUF before the Act came into force, although the badge had been removed from the belt, and no armlet was worn which had been a recent development of the fascist uniform.

The relatively few reported cases of s1 Public Order Act violations would indicate that the provision was successful in preventing political activists from causing provocation by wearing political uniforms. In giving evidence, Reginald Dawson declared that he had worn the same outfit in Kilburn and Camden Town. At Camden Town, an Inspector took a different view of his powers under s1, and asked Dawson if any others were going to join him wearing the black polo jumper, stating that if they did then it would constitute a political uniform. This demonstrates that it was not just the courts that had difficulty defining what constituted a political uniform, because at street level, the vague statute also allowed for inconsistency among police action. If it proved difficult for the authorities to interpret this ambiguous criminal offence, the choice of dress for the political activist had to be carefully selected. The real value of s1 was that the Blackshirt uniform was not worn again in public processions or by

⁹¹ *The Times*, 26 Aug 1937.

their stewards at public meetings, and ended the provocation of the uniformed Fascist Defence Force, which subdued their appearance as a private army and removed a certain level of the provocation that the BUF generated. However, it did not end the violence and public disorder that was associated with the BUF and their anti-fascist opposition.⁹² It has been argued by Anderson, that since the provisions of the Public Order Act 'are inhibitive rather than repressive, [its effects] are impossible to assess.'⁹³ Coupland has also suggested that, without their uniforms, the BUF attracted a mass of new members that were previously put off by their military appearance.⁹⁴ In fact, despite the uniform ban, the BUF had a sudden growth in membership before the Second World War, due to their peace campaign.

9) Post-War legacy: The Enduring Proscription of Political Uniforms

S1 Public Order Act 1936 continues to remain in force and was not repealed when the 1936 Act was reformed by the Public Order Act 1986. The most prominent s1 convictions since the Second World War were of members of the British Ku Klux Klan (KKK) in October 1965, and the Provisional Sinn Fein for offences committed in June and August 1974. For the KKK case, s1 was a convenient provision to prevent the dangerous growth of a racist, far-Right movement in Britain, emulating the American model.

On 19 June 1965, 12 members of the KKK held a cross burning ceremony in Rugby, Warwickshire. Despite being on private land, it was argued by the prosecution in *R v Robert Edward Relf and others*,⁹⁵ that the ceremony constituted a public meeting as members of the press were invited, and the burning cross could be seen for miles

⁹² See Chapters 2 and 3 for examples of fascist related violence following the Public Order Act.

⁹³ Anderson, *Fascists*, p. 191.

⁹⁴ Coupland, 'The Black Shirt in Britain', p. 115.

⁹⁵ *R v Robert Edward Relf and others*, unreported, (1965) Rugby Magistrates Court.

around; therefore, fulfilling one of the requirements under s1.⁹⁶ The eight members were all convicted, three of whom received three month prison sentences, two were fined, and three were bound over.



Figure 5.4 A member of the British KKK at the ceremony at Rugby, 19 June 1965. Permission to reproduce this image has been granted by The National Archive.

With the exception of Relf, who was convicted of aiding and abetting Thomas Allen and William Duncan to commit the offence, the dress of the seven uniformed members consisted of 'white gowns with a black cross over the heart and cloth headdresses with slits for the eyes and mouth which were not unlike dunce's caps.'⁹⁷ The uniform is illustrated in figure 5.4. At the meeting it was recorded that the aims of the Klan were 'to rid Britain of Jews, Roman Catholics and Coloureds... by every possible means including violence.'⁹⁸ In an interview with the invited members of the press, Relf stated that, 'if candidates could be found they would put them up at the

⁹⁶ *The Times*, 8 Oct 1965.

⁹⁷ *Ibid.*

⁹⁸ TNA, DPP 2/4009.

general election'.⁹⁹ The prosecution also successfully argued that these statements, indicated a 'political organization, and... the promotion of political objectives' which further guaranteed a successful prosecution under s1.¹⁰⁰

The two separate Sinn Fein cases were brought together on appeal to the Queen's Bench Division in December that year. The first, *O'Moran and others v DPP*¹⁰¹ consisted of eight appellants who were convicted at Old Street Magistrates for offences contrary to s1(1) Public Order Act 1936. They had dressed in black or dark blue berets, dark glasses, dark pullovers and other dark clothing, during the funeral procession of their colleague and hunger striker, Michael Gaughan, who died in Pankhurst prison, on the Isle of Wight. In the second case, *Whelan and Others v DPP*,¹⁰² the 12 appellants had been convicted following an attempted political procession from Speaker's Corner to Downing Street. The members were arrested at the start of the procession under s1(1) after several warnings from Chief Inspector Cooksley, who informed them that wearing a political uniform was against the law and that if they did not remove their berets they would be arrested.

The significance of the appeal was that it was the first time that matters relating to s1 had been brought before a superior court. In giving judgment on the first case, Lord Widgery CJ ruled that although the defendants were 'dressed in a similar but not identical fashion' the fact that they all wore berets, and were seen together, rather than in isolation, ruled that that article was uniform as its adoption was for 'the purposes of showing association between the men in question.'¹⁰³ He continued to point out that the uniform in *O'Moran* went beyond the berets in any case and ruled

⁹⁹ *The Times*, 8 Oct 1965.

¹⁰⁰ *Ibid.*

¹⁰¹ *O'Moran and others v DPP* [1975] QB 864.

¹⁰² *Whelan and Others v DPP* [1975] QB 864.

¹⁰³ *O'Moran and others v DPP* [1975] QB 864, 872-3.

that the pullover, dark glasses and dark clothes, on that occasion, constituted a uniform within the meaning of the Act.

Further to this, Widgery had to judge whether it was necessary under s1(1) for the prosecution to prove which political organisation was concerned. At the Old Street Magistrates court, Police Sergeant Garnham stated that the berets had been previously associated with members of the Irish Republican Army, who wore them with combat jackets, and were also becoming a common feature amongst other Irish republican organisations at demonstrations in London. He claimed that people wearing berets were frequently seen in the close proximity of Sinn Fein banners or were carrying them. It was stressed by Widgery that it was not necessary to prove the previous use of the article as uniform, but that their style of dress showed a mutual association with one another. He continued that this could be judged from the events when the alleged uniform was worn. The particular events in this case were that the men wore what Widgery had already judged to have been uniforms, at a funeral service associated with a member of the Irish republican movement, and delivered an address of a political character. Bearing this in mind, he stated that, it was 'abundantly clear that they were activities of an organisation of a political character. Thus the chain of responsibility under the section would be complete'¹⁰⁴ and consequently dismissed the appeals headed by O'Moran.

The appeals headed by Whelan were also dismissed. Widgery's judgment here was even more explicit as he ruled 'I see no reason why a beret in itself, if worn in order to indicate association with a political body, should not be a uniform for present purposes.'¹⁰⁵ In his reasoning, he concurred with the Magistrate's view that, 'An

¹⁰⁴ Ibid. at 874.

¹⁰⁵ *Whelan and Others v DPP* [1975] QB 864, 876-7.

independent bystander, seeing the approach of a group of marchers wearing identical headgear under the banner of the Provisional Sinn Fein, would conclude that it was their uniform.¹⁰⁶ This ruling indicated that a single item of clothing, such as a beret, could be legally described as a political uniform within the meaning of the Act.

10) Conclusion

Under the common law, there have been several instances when a defendants' attire has been judged to have been a political uniform within the meaning of s1 Public Order Act 1936, but a key feature of all these decisions has been the unwillingness of the presiding judges to lay down any general principles. Instead, an importance to the specific events recorded and conduct of the defendants has been highlighted in their judgments. Therefore, no conclusive definition of what constitutes a political uniform can be offered, but the common features found in such judgments can elucidate a better understanding of the phrase.

In the interwar period, respective Magistrates have convicted Blackshirts who provided varied and innovative defences. For the Blackshirt newspaper venter, Wood, it was argued in his defence that his uniform was a livery from the company Action Press, and that other newspaper venders wore similarly styled dress. In this case it was judged that a complete uniform need not be worn and that a general member of the public would have recognised him as a fascist rather than an employee of Action Press. The second defence for Charnley and others was that their clothes were purchased within the everyday course of their lives, and that only their badges signified an association with a political organisation. It was also judged

¹⁰⁶ Ibid. at 876.

by the Magistrate that the uniform does not need to be complete to fall within the meaning of the Act, and the brassard, or armband, 'with the emblem of the political party was certainly an identification and a uniform.'¹⁰⁷ The third Blackshirt prosecution of Dawson relied on the previous association of the black polo styled jersey with the BUF before the Act was passed. These three judgments reflect the subsequently wide scope that s1(1) holds without a definition of what constitutes a political uniform.

However, the leniency given to the Greenshirts questions the consistency of the application of the Act. The descriptions provided to the courts of the defendants' attire had overwhelming similarities with those worn by the Blackshirts. Yet, these cases were dismissed. In the case against Douglas Wright it was reported that he was dismissed under the Probation of Offenders Act 1907 on payment of £5 5s costs. Although this was a similar figure to the fines issued to the Blackshirts, the defendant was spared a criminal conviction. This inconsistency was highlighted by *The Blackshirt*, which alleged discrimination against the fascists stating that it was proof that the Public Order Act was only supposed to work against them. The BUF challenged Parliament to include a definition of 'political uniform' within the law, to allow the Magistrates to 'keep their just reputation of impartiality.'¹⁰⁸

The interwar court judgments demonstrate the flexibility that s1 provides without including a definition. It is clear from the Parliamentary debates that the uniform ban was primarily aimed at preventing the provocation caused by the Blackshirts, and it was regretted that small political groups without a reputation for public disorder like the SCP would be affected by the Act. Yet, any statutory provision should be applied

¹⁰⁷ *The Daily Mail (Hull)*, 29 Jan 1937.

¹⁰⁸ *The Blackshirt*, 5 June 1937.

equally to each defendant regardless of their political persuasion. This vague provision has offered tribunals an opportunity to apply a broad interpretation to their judgment. In practice this has demonstrated that a more lenient view has been afforded to those whose uniforms and political methods have not had a history or reputation of provocation or serious disorder. Political movements that represent a threat to public order or national security such as the BUF, KKK and the IRA have consequently found that the courts have taken a more serious view when they have breached s1.

Conclusion

1) Prologue

The relationship between public order law and British fascist activism is multi-dimensional, incorporating the shared responses of the police, the judiciary, the Government, local authorities, the public and anti-fascists. Furthermore, seen within the context of wider public order responses from before and after the era of the BUF, the wideness of discretion which was afforded to the police and the courts demonstrates that consistency within the law was an unrealistic ideal. In default of this, accusations of partiality from both the far-Right and the far-Left ensued. However, this examination on legal responses which has incorporated social and cultural factors with an analysis on the discretion used has revealed that there were wider factors which directed the actions of the police and the judgments of the courts when dealing with extreme political activism.

2) Parliamentary Responses to Fascism

Parliament's crucial response to the BUF in the interwar period was the enactment of the Public Order Act 1936. Although it passed through Parliament with relative speed following the Battle of Cable Street, debate on public order legislation had previously been invoked in the House of Commons. The draft Bills of 1932 and 1934 demonstrate that the 1936 Act was not a knee-jerk reaction to the disorder on 4 October in East London, but a response that had incorporated previous notions on how legal measures could be devised to keep the peace. Despite this, the BUF was the primary stimulus for the Act which was principally mandated to curtail the

disorder created by the fascists' incendiary propaganda. However, the Home Secretary, Sir John Simon, contended that, 'I am not trying to draw a distinction between one extreme creed and another... The point is that we should do our best to act even-handedly in the matter and base ourselves on general principles.'¹ However, the provisions incorporated within the Act directly affected different areas of the fascists' propaganda armoury and provided the police and the authorities with more definitive powers to preserve order, although many of these provisions still carried a certain amount of discretion.

For example, the difficulty in proscribing a procession when a breach of the peace had been anticipated was largely overcome by s3. The previous uncertainty about common law preventative powers that had been highlighted by *Beatty v Gillbanks* and previous Blackshirt marches now had a statutory provision, as Chief Constables were provided with the power to prohibit a public procession in advance with the sanction of the Home Secretary. Yet, although this response sharply followed the Battle of Cable Street, we have seen that powers to prohibit processions had already been debated in response to the Hunger Marches in 1932 and 1934.² Furthermore, these provisions had the capacity to affect more social groups than just political extremists.³ The creation of such liberty limiting legal powers was cynically criticised as demonstrating political partiality by Liberal MP and member of the NCCL, Dingle Foot:

The party to which I belong and, I think, the Conservative party, do not very often indulge in processions... It is from the very fact that you have a form of demonstration not much used by some parties but a good deal used by others that some danger arises.⁴

¹ *HC Deb*, 16 Nov 1936 vol 317 cc1350.

² See Chapter 2.

³ See *Kent v Metropolitan Police Commissioner* which is discussed in Chapter 2.

⁴ *HC Deb*, 07 Dec 1936 vol 318 cc1729.

One provision which was more directly targeted at the BUF was the prohibition of political uniforms under s1. Yet, even here concern was levelled by Simon that failure to act would result in the adoption of political uniforms by other groups. The Government's response in 1936 demonstrated that there was apprehension in introducing legislation which prohibited the wearing of certain clothing. The abandonment of the uniform clause during the drafting of the unsuccessful Public Order Bill 1934 and the frequent requests by certain MPs in this period to prohibit political uniforms were justly delayed. This was not because of any fascist partiality, or casual toleration of their activities, but because of the serious implications on personal liberty of introducing such a restrictive legal provision. Yet, two years later with the resurgence of fascist activity and public disorder, the law proscribing political uniforms was finally enacted.⁵

In response to the fascist Jew-baiting in the East End of London in particular, s5 created an offence to use threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace, or whereby a breach of the peace is likely to be occasioned. This provision controversially provided the police with wide discretionary powers which, as discussed in Chapter 3, led to it being referred to by the police as the 'breathing Act'. Although the powers had previously existed in the Metropolitan Police Act, the stimulus to nationalise this provision was a response to the fascist's provocative doctrine. Subsequently, s5 and the amendments made by ss4 and 5 Public Order Act 1986 have become a widely used tool by police officers dealing with all manner of anti-social behaviour, and not just racial discrimination and political extremism.

⁵ Section 1 still remains in force today, despite its infrequent use discussed in Chapter 5.

During the progression of the Public Order Bill through Parliament, the eagerness of many MPs to create legislation which would bring an end to the BUF was clearly evident. This was noticeably demonstrated by Labour MP, James Lovat-Fraser, who declared, 'I hope that the action that we take to-night may crush Sir Oswald Mosley's movement.'⁶ The predominant view within Parliament during the reading of the Public Order Bill was the wider effect that it would have on individual liberty. Communist member William Gallacher made the most outspoken attack on the Bill stating that, 'this is one of the most dangerous attacks on democracy that has ever been made in this country'.⁷ Nevertheless, many MPs who were concerned about the loss of fundamental freedoms reluctantly supported the Bill in order to curtail fascist propaganda. Labour MP George Lansbury conceded, 'I should think that no Bill has ever been passed, as this will be passed... which was so intensely disliked.'⁸

The Home Secretary, Sir John Simon, stated:

It must be remembered that the essentials of this liberty are not only the rights of those who wish to demonstrate or protest, but also the rights of the general public, who have their interests in being protected from suffering from serious and illegitimate disturbance. It must be remembered that we are not passing legislation simply for the purpose of striking at one particular section, but trying to base our legislation on a general principle.⁹

This admission established that collective security was now being prioritised over fundamental civil liberties. Subsequent sanctions by the Home Secretary under s3 to prohibit fascist processions also detrimentally affected the liberty of other political groups. This danger was predicted by Labour MP Andrew MacLaren:

It may please many just now because it seems to be hitting at the Blackshirts, but when it is the law of the land, and has no regard to the colour of the shirt

⁶ *HC Deb*, 16 Nov 1936 vol 317 cc1434. See also Chapter 1 for debate between Lawrence and Pugh on the number of Conservative MPs who defended BUF stewards at Olympia, 1934.

⁷ *HC Deb*, 26 Nov 1936 vol 318 cc603.

⁸ *Ibid.* cc1765-66.

⁹ *Ibid.* c1784.

or to the opinions that are held, people who are welcoming it now will find that it hits at them, too.¹⁰

The Public Order Act provided the police with wide discretion in maintaining the peace. In 1936, following suspicion about providing the police with such wide powers, Simon stated:

Inevitably, a certain amount of discretion must be left in these matters to the police. There are certain people who look upon the police of this country as if they were petty tyrants, trying to damage a particular cause. There is not a word of truth in that. They do their duty to the public fairly.¹¹

It is, therefore, essential to analyse police responses in relation to any perceived partiality.

3) Police Responses to Fascism

The most significant theme discussed within this thesis is the inconsistent policing of extreme political activism. Various disparities within the police responses to both fascist and communist activity have led to the repeated accusation of politically motivated policing in favour of the far-Right. While some analysis of a significant number of events seems to support this theory, an in-depth examination which contextualises the historico-legal environment presents an alternative hypothesis to that of a predominantly pro-fascist police institution. Additionally, the historical contextualisation of public order policing before the era of the BUF also highlighted that police practice was often inconsistent in different regions, independent of who the political activists were.¹² Therefore, any inconsistency in police practice must also consider that regional variations played an important part of public order policing, and potentially undermines perceptions of political partiality.

¹⁰ *HC Deb*, 26 Nov 1936 vol 318 cc623-4.

¹¹ *HC Deb*, 26 Nov 1936 vol 318 cc587-8.

¹² This includes the different police responses to the march of the unemployed Manchester workers in 1908 in Chapter 3 and the variations in policing meetings held on private premises in Chapter 4.

The relationship between the police and the opposing politically extreme movements was chiefly dictated by the contrasting attitudes each group demonstrated to both the police and the law. For instance, many of the far-Left incidents discussed involved challenging police instruction to determine legal boundaries whilst displaying a confrontational attitude towards the authorities. In contrast, a common feature of fascist activism has involved positive police communication during the organisation of large national demonstrations and obeying police instruction when processions or meetings were proscribed under the breach of the peace doctrine. This has been substantiated by former Devon and Cornwall Chief Constable John Alderson who stated:

Though both extremes have similar characteristics... they differ in the targets which they aim to attack. Where the Right attacks minorities and non-conformist groups in its assertion of nationalism, the Left attacks the establishment, particularly the police...¹³

However, the danger of advocating this position which defends the controversial policing of politically extreme activism is the proposition that deficient policing tactics or violent and racist propaganda of the far-Right will be excused in the process. This is not the case. For instance, racist, aggressive and militant fascist propaganda and unjust incidents of fascist violence, such as the brutal stewarding at Olympia and the failure of the police to respond appropriately have been rightly condemned within this thesis. The BUF's method of preaching their particularly provocative political doctrine was principally conducted in a legally astute manner which 'circumvent[ed] legal measures'.¹⁴

¹³ J. Alderson, *Law and Disorder*, Hamish Hamilton Ltd. (1984) p.48.

¹⁴ TNA, HO 144/19070, letter from BUF political officer Richard Plathen to Home Secretary Sir John Gilmour. 22 Feb 1934.

The fact that far-Right groups tend to provoke disorder, rather than initiate it presents further policing complications which are hindered by ill-defined legal powers. The Public Order Act 1936 removed some of the more contentious issues for the police, who could now apply to the Home Secretary for a procession ban which, although still controversial, was directed by statute rather than ambiguous common law powers. Even so, poor definitions within the Act also hindered effective and consistent policing. There was no definition of political uniform to direct police officers under s1. More controversially, with the use of ambiguous terms like threatening, abusive and insulting, and no definition of a breach of the peace, s5 was open to very wide discretion, and ultimately inconsistency. Yet, as has been demonstrated in Chapter 3, the use of this subjective provision was also reliant on factors other than political partiality, and police responses had both targeted and overlooked abusive anti-Semitic fascist propaganda. It was also acknowledged that fascists moderated their language when senior officers were present which implies that low level officers were in some cases more sympathetic to fascist propaganda. Indeed, according to East End resident Arthur Harding, a senior Special Branch officer admitted that they had a particular problem of police officers joining the BUF in the early stages of the War. Harding responded, 'I'm not surprised because if they've not the experience you and I have had, you might stand there and think they were the saviours of the country.'¹⁵ Yet, this does not mean that fascist partiality was endemic within the lower tiers of the police force. A further likely suggestion on why some officers were more hesitant in utilising s5 at fascist meetings was that it could potentially create disorder from an otherwise amenable crowd. The problem of policing public order in the 1930s did not solely rely on *how* the law should be

¹⁵ R. Samuel, *East End Underworld: Chapters in the Life of Arthur Harding*, Routledge and Kegan Paul (1981) p. 276.

applied, but also *when* it is appropriate to apply it. This highlights both the value and deficiency of police discretion, especially when utilising either the common law powers of breach of the peace or subjective provisions under s5.

Even when public order law is applied without political motivation, crime prevention by its very nature relies, somewhat tentatively, on the uncertain and risky process of prediction and intervention, leaving the preventative nature of the breach of the peace doctrine to be extremely questionable. Criminologist Daniel Gilling emphasized that the path from prediction to intervention is filled by the 'very human process of implementation'; demonstrating that these two constituent elements of crime prevention create a 'rough terrain' that in practice the police ultimately traverse.¹⁶ Decisively, as police tactics are judged *retrospectively*, their use of discretion in anticipating a breach of the peace and the actions taken to prevent it are inevitably open to retrospective criticism. Balancing this difficult equation of preserving both order and liberty under largely discretionary legal provision, ultimately leads to inconsistency which effects public confidence in the police. While political partiality would have influenced the actions of some police officers its importance to the responses of political extremism has been overstated. The existence of discretion which allows police officers to selectively enforce the law naturally leads to inconsistency between individual officers as well as the practice of provincial forces. In addition, these inconsistencies were also present when considering the enforcement of public order law in the eras either side of the BUF's activism. By selecting from a wide range of sources, this difference demonstrated many instances of autocratic police action which hindered fascist activism. The Home Office correspondence which included consultations with Chief Constables

¹⁶ D. Gilling, *Crime Prevention: Theory, Policy and Politics* (UCL Press Limited, 1997) pp.2-3.

and successive Metropolitan Police Commissioners highlighted the deficiencies within the law when policing the legally astute BUF activism. The Blackshirts obedience to police instruction, such as closing meetings when requested, significantly reduced any potential of conflict with the police.

4) Fascists and the Judiciary

During the reading of the Public Order Bill an ILP MP, Campbell Stephen, made an accusation that Magistrates were biased stating, 'the trouble in London has been due to the fact that the police and the magistrates have been inclined to take sides'.¹⁷ This accusation was based on two similar cases receiving different sentences from the same magistrate, although the exact details were absent from his argument. Yet, ascertaining whether activists from different extreme political movements are treated partially within the courts is of central importance. Therefore, any assessment of comparable case judgments must be the result of a comprehensive legal enquiry which also acknowledges its historical contextualization.

In the inter-war era, there were two controversial cases which seriously restricted individual liberties related to political activism. The verdicts from *Thomas v Sawkins* and *Duncan v Jones* were both against far-Left activists, although the implications of these judgments also affected fascist propaganda. In both cases, Hewart LCJ presided and, according to Lawyer David Walker, he has since gained a notorious reputation as 'perhaps the worst Chief Justice since the seventeenth century, not as being dishonest but as lacking dignity, fairness and a sense of justice'.¹⁸ It may also be considered that the unfavourable outcomes from these judgments were partly

¹⁷ *HC Deb* 16 November 1936 vol 317 cc1398.

¹⁸ D. M. Walker, *Oxford Companion to Law* (1980), p. 565, as quoted from Ewing and Gearty, *The Struggle*, p. 265.

attributable to the cynicism and danger with which the authorities regarded communist activism. Although fascist activism provoked serious public disorder, the activism of the far-Left was considered the most serious threat to national security as it advocated unconstitutional methods including the subversion of the armed forces and industrial sabotage.¹⁹ Previous case law such as *Beatty v Gillbanks* also favoured the lawful exercise of fascist activism. With no Constitutional 'right' to assemble in public, the *Beatty* judgment was fundamental in providing the BUF with this freedom prior to the Public Order Act 1936. Hewart's judgment in *Duncan v Jones* is perhaps the most significant here, in so far as it could perhaps be argued as a politically biased decision. The principle of this case closely resembled that of *Beatty*, and it was argued for the appellant that on this principle the bad conduct of another person could not make an otherwise legal act unlawful. Ewing and Gearty declared that Hewart's quick dismissal of the appeal is noteworthy 'for the vacuity of its reasoning [and] for its long term deleterious effect on civil liberties.'²⁰

At the Police Courts, the magistrates' judgments that have been examined have demonstrated that fascists were often given firm sentences as well as their political opponents. For example, three of the fascists at the Plymouth meeting were sentenced to six weeks hard labour for committing a breach of the peace and in London, BUF speaker Earnest Clarke was effectively prevented from utilising abusive propaganda when he was convicted of a s5 Public Order Act 1936 offence and bound over in the sum of £50 to be of good behaviour for 12 months. These judgments and others help demonstrate some judicial consistency. In fact, in cases regarding political uniforms judgments have tended to favour more moderate

¹⁹ For a comprehensive examination of the security services responses to CPGB see Andrew, *The Defence of the Realm*, Section B.

²⁰ Ewing and Gearty, *The Struggle*, p. 265.

expressions of political expression. For example, on balance the Greenshirts received more lenient punishments than the Blackshirts. Furthermore, the 1965 judgments involving three of the members of the KKK utilised the full sentencing power of three month's imprisonment. Judicial consistency was also present in cases relating to accusations of unnecessarily violent stewarding. The charges brought against communist and Conservative stewards in 1936 and 1958 respectively, were both dismissed by the magistrates who ruled in favour of the steward despite the evidence suggesting they had both used undue force.

This thesis has primarily demonstrated that legal responses to far-Right propaganda have not intrinsically been applied in a partial manner by Parliament, the police or the judiciary. Although, this is not to deny that fascist sympathies may have existed within these institutions. For example, while it must be recognised that there were police officers who had deliberately acted partially in favour of the fascists, this research demonstrates that it was not an attitude that was inherent amongst the majority of police practice, which has been demonstrated in a number of ways.

Firstly, the study of a wide range of sources has indicated that fascists have also been the victims of autocratic police practice, and the study of several magistrates' judgments has also determined that they were not necessarily treated with anymore leniency in the courts. Secondly, it has been established that public order policing has had a history of inconsistency at local levels. The different local strategies applied to the 1908 march of the Manchester unemployed in Birmingham and Coventry clearly identifies the diverse responses to the same problem by different police forces and local authorities. This was further demonstrated by the *Report of*

*the Departmental Committee*²¹ in 1909 which recognised that three distinctive policing strategies were practised in different localities. These significant inconsistencies were largely attributable to the evolution of local policing tactics and the influence of Chief Constables. This was also witnessed in the 1930s with the controversial police practice at Manchester, Hull and Exeter in particular, when legally contentious steps were taken in an attempt to prevent or stifle BUF activity.

Thirdly, even within the same location, the discretionary nature of public order law has undoubtedly led to inconsistency which is evidenced by the response of lower level police officers. While the ability to apply discretion provides police officers the opportunity to be politically influenced in their decision making, it more significantly provides the prospect that different police officers may assess a similar scenario differently and enforce the law in contrasting ways regardless of any political motivation or bias. Therefore, because of the necessary existence of discretion, police officers are able to act with different rationales as 'street-level bureaucrats'.

Fourthly, the different methods of activism employed by the far-Right and Left also account for a proportionately larger number of arrests being made. The BUF's legal shrewdness meant that they knew how to deliver provocative political propaganda and contentiously stay within legal boundaries. Also, even when police responses were autocratic, instruction was usually obeyed and the police's authority was not challenged, which largely contrasts with the policing of far-Left activism. In relation to this, the origin of disorder had significantly shifted with the arrival of BUF activism. Apart from the disorder associated with the Salvation Army in the 1880s, the authorities were largely concerned with disorder that originated from public

²¹ Cd. 4673, *Report of the Departmental Committee on the Duties of the Police with respect to the Preservation of Order at Public Meetings*.

assemblies and the arrival of BUF propaganda that provoked disorder from the anti-fascists presented a significantly challenging problem. Concern of disorder at public meetings on private premises had also been focused on the actions of the interrupter, rather than the steward. The Public Meeting Act 1908 and the report of the Departmental Committee the following year were both directed towards preventing interruption. While the use of force by stewards was regarded as a necessity to remove the need for police at political meetings, the violence used by the organised Blackshirt stewards again presented new problems until the judgment of *Thomas v Sawkins*.

Finally, the enactment of the Public Order Act 1936 provided the authorities with decisive legal provisions which had the power to restrict and stifle fascist activism. Although the Act was also utilised against other political movements and protesters, it cleared much of the previous legal ambiguity which surrounded the responses to the provocation of the far-Right. The BUF's political uniforms and their public processions were consistently prohibited despite the vagueness within the respective provisions. Most controversially, the subjective s5 provided police officers with such wide discretion that it was unsurprisingly inconsistently applied. While some officers demonstrated either fascist partiality, or at the very least a disliking of Jews and/or communism, officers such as Inspector James were disciplined and a proactive police response was implemented to remedy fascist provocation that consisted of threatening, abusive or insulting language or behaviour. Therefore, whilst recognising that this historico-legal methodology does not prove that pro-fascist police partiality did not exist within this period, it has demonstrated that this theory is too simplistic and has been over-stated by lawyers such as Ewing and Gearty and historians such as Lewis and Renton. Furthermore, it re-establishes the position of

Thurlow and Anderson who recognised that many of the inconsistencies by lower ranking police officers at street level were caused by problems of interpreting the law. It reinforces this position by adding a legal lens which evaluates the developing law of public order combined with the consideration of police discretion. It has identified other decisive factors which contribute to the argument why there was a perception that the policing of politically extreme movements differed, and must be considered.

Stevenson stated that as a 'mediating force in the political conflicts of the inter-war years, the police still remain very much an unknown quantity.'²² This thesis has demonstrated that a wider historico-legal analysis of the controversial police tactics of this era has brought us closer to understanding the contemporary issues of public order policing and the nature of the relationship between the police and the extreme political movements. Evidence clearly suggests that throughout the 1930s the police commissioners and Chief Constables wanted more power to limit fascist activism. Although it is evident that this attitude may not have always filtered down to street level, it is subject to more factors than the potential of political partiality. The examples analysed here demonstrates that police discretion across the provincial police forces and the Metropolitan police has varied, revealing vast inconsistency which has not just been confined to the over-policing of the far-Left and the protection and collusion with the far-Right. The autocratic policing of the BUF and the activity of the Home Office, both behind the scenes and in the drafting of the Public Order Act 1936, demonstrates that they were not explicitly tolerant of fascist activism and their engagement in reducing BUF activism should not be overlooked in the discourse of the BUF and public order law.

²² Stevenson, 'The BUF', p. 148.

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