

RIOTS

I was once booked by Australian TV to be their legal expert live-on air during the funeral of Princess Diane. ‘So what are the constitutional implications of the death of Her Royal Highness?’ I was asked. ‘There are none,’ I replied, and – immediately hustled off stage – spent the rest of the six hour marathon reading *The Economist* in a backroom. It is the same with the riots that have ravaged England this August: they reveal no gap in the law or need for any new legal initiative of any sort.

Riot has long been a serious crime in Britain. The Thatcher government’s 1986 Public Order Act put it (and the lesser crime of violent disorder) on a statutory basis, with those convicted being liable to terms of imprisonment of up to ten and five years respectively. In that same year the stop and search powers in the 1984 Police and Criminal Evidence Act 1984 came into force and these have already been greatly expanded by legislative changes made in 1994 and 2000. Indeed we have as a result arguably already returned to the police the kind of wide power they had once enjoyed under the old Vagrancy Act (the ‘SUS’ law) and which had been such a source of grievance in the run up to the riots of 1980 and 1981. Resentment at perceived police harassment of young men from certain ethnic groups seems to have been one factor in, at the very least, sparking the August riots and possibly also in exacerbating them.

Though the old Riot Act of 1714 has been repealed, the law also allows the police (and for that matter the rest of us) to use reasonable force to suppress an ongoing riot. This elastic provision would allow, in extremis, the deployment of troops and the shooting of civilian rioters (and others) that might well ensue. The police already use firearms and – another legacy from the Thatcher era – have the legal right to possess (and therefore to use) water cannon, baton rounds (plastic bullets) and CS gas if such equipment is ‘reasonably required... to discharge their functions’. Likewise, whether you want to call it a curfew or not, the common law has long allowed control of the movement of people if it is judged necessary to curb or prevent breaches of the peace.

Nor have the courts shown any inability to deal with the vast numbers of prosecutions they have needed to oversee. A remarkable and generally praiseworthy feature of the prosecutorial and judicial response has been its speed, narrowing the temporal gap between wrong-doing and punishment in a way that has been gratifying to many and terrifying to those who had thought that in a riot ‘anything goes’. A disturbing effect of this however appears to have been a range of sentences which have been very harsh – even allowing for the fact that the crimes committed have taken place in circumstances of such serious disorder. The routine denial of bail, if proven, is also clearly illegal, with each case needing to have been considered on its merits. Expect a range of corrections from the Court of Appeal when the dust has settled.

The issue highlighted by the riots is not one of legality; it is of capacity. Can the police enforce the laws they already have available to them? For a while the frightening answer this August appears to have been no. This is what makes the plan to make deep cuts to police forces across the country so politically risky. Whatever his media people tell him, it is foolish of the Prime Minister to keep assuming that the public will swallow indefinitely the assertion that there are all these back office staff lolling about in police stations twiddling

their thumbs whose removal will not affect front line services. Also ill-judged (amateurish even) were the clumsy efforts at micro-management made by senior politicians, first criticising the police for supposed mistakes early on and then trying to take credit for the operational decisions which eventually helped to quell the disorder. The contrast between the sun-tanned know-alls flying in 'to take charge' and the harassed officers on the front line was evident to all who had been in the country to see it. This was also surely not the time to talk up the suitability of an American super-cop to solve all London's woes: even the most anxious of British voters knows in their bones that the Capital is nowhere like New York and Los Angeles – and does not want its policing to follow these models.

The effort to recover lost political ground made the prime minister sound even more like Tony Blair than usual, all busy talk of legal changes that in truth signified nothing. His plan to tackle social networks has already fallen away. The proposed police power to remove face masks 'under any circumstances where there is reasonable suspicion that they are related to criminal activity' would hardly have stopped the riots and may simply be another vehicle for police harassment. 'Gang injunctions' – new ASBO style civil court orders which restrict the movement of people accused of being in gangs – are to be rolled out against children as well as adults. As though on some kind of reactionary auto-pilot, the prime minister has fallen back on his usual suspects, welfare spongers, dysfunctional families and 'phoney' human rights. There is repeated talk of 'Broken Britain' but little openness about what to do to fix the country. Nor is any proper inquiry planned to provide the answers.

If the Prime Minister has had a bad August, so too has the leader of the opposition. Ed Miliband has not risen to the heights that he achieved when taking on Rupert Murdoch the month before, his parliamentary analysis of the riots lacking any kind of punch. Of course he may be right to judge that the UK public is not ready for a determined assault on the uncontrolled global capitalism that is dissolving social bonds and destroying communities just as Marx said it would. But he could produce a charter for families that would force the government's commitment to untrammelled capital into the open. To make a start on this how about something very simple, a return to Sunday trading laws? Give families at least one day together away from the relentless pressure of work. The public might then have to decide which side it is on: family or football; relaxing or retailing. But it would be a real debate, not a platitudinous repetition of the emptily obvious.