

Fall 1964

Freedom of Assembly

Norman L. Chapple

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Norman L. Chapple, Freedom of Assembly, 55 J. Crim. L. Criminology & Police Sci. 425 (1964)

This Criminology is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

FREEDOM OF ASSEMBLY

Constitutional Right or Lynch Law

NORMAN L. CHAPPLE

Norman L. Chapple is a Detective Constable in the Criminal Investigations Department of the Derby Borough Police, England. Constable Chapple prepared this paper as a graduate assistant in the School of Police Administration, Michigan State University where he recently received an M.S. degree. He was first appointed to the Derby Borough Police force in 1952. In 1959 he was granted a leave of absence and studied law at the University of London, receiving an LL.B. degree in June 1962. His study in this country was a Fulbright Travel Award.—EDITOR.

The traditional Anglo-American freedom of assembly has in some recent instances degenerated into a form of censorship by mob violence which could become a serious threat to public order on both sides of the Atlantic. In order to avoid the necessity, in the interests of public safety, for further legal restriction of the freedom it is essential that the police of both nations take strong, but sensible and just, action to protect individuals or groups in the exercise of this fundamental constitutional right. Firm police action, however, will be completely ineffective unless supported by the courts who are under a moral duty to impose exemplary punishment on those who would seek to abuse the freedom of assembly. Only by the stringent application of the existing law, by law enforcement agencies and courts alike, can this facet of civil rights be properly safeguarded.

THE COMMON LAW

Certain limited but well established restrictions of the freedom of assembly have long been recognised in both England and the United States. Breach of the peace, obstruction and criminal conspiracy, for instance, are common law misdemeanours which, together with statutory riot under the Riot Act, 1714, are offences which are accepted in England as necessary limitations of the rights of individuals to gather for the purpose of expressing themselves in public. In many American cities and states a similar effect is achieved by the enforcement of the laws concerning trespass, disorderly conduct, obstruction ordinances, and ordinances requiring a permit for any public meeting.

It is only pertinent here, however, to consider the main limitation of the freedom of assembly,

namely the law concerning lawful and unlawful assemblies. The common law concerning "unlawful assemblies" is common to both countries and is well defined. The police, therefore, have no difficulty in taking appropriate action where an assembly is unlawful per se. An "unlawful assembly" can be said to exist where three or more persons assemble to commit a breach of the peace; or assemble in such a manner that reasonable persons are caused to fear a breach of the peace; or assemble to commit a crime. Although this definition of the English common law is generally applicable in the United States, some jurisdictions have statutes which either define the offence of "unlawful assembly" or provide a specific penalty for the common law offence. It will be sufficient if the facts established in any particular case constitute an offence within the statutory definition, but the statutes will generally be interpreted in the light of the common law definition.¹ All persons joining in or encouraging the proceedings are criminally liable,² but the question of what constitutes encouragement is a matter for the jury. For instance, it has been held that mere presence does not constitute encouragement, but if unexplained, it may be evidence for the consideration of the jury.³ In contrast, it was decided in one American case that presence at a meeting is sufficient evidence of participation in an "unlawful assembly" if, in fact and in law, the assembly was "unlawful".⁴

It is noteworthy that an assembly will become an "unlawful assembly" if the speakers or audience

¹ *People v Most*, 27 N.E. 970, 128 N.Y. 108, 113, 26 Am S.R. 458.

² *R. v Atkinson* (1869) 11 Cox 330.

³ *R. v Coney* (1882) 8 Q.B.D. 552

⁴ *People ex rel. Mertig v Johnston*, 62 N.Y.S. 2d. 429, 186 Misc. 1041

merely act in such a way "as to give firm and rational men, having families and property there, reasonable ground to fear a breach of the peace."⁵ A well founded fear in the minds of firm and courageous persons, of threatened danger to the public peace, is required in the United States.⁶

An "unlawful assembly" becomes a "riot" as soon as it starts from its meeting place to carry out the purpose for which it assembled, and a "riot", in turn, becomes a common law "riot" as soon as it begins to carry out that purpose with a show of violence. Apart from the statutory provisions in some American states, "unlawful assembly", "riot" and "riot" are all common law misdemeanours, and the duties of the police on such occasions are clearly to disperse the gathering and arrest the ringleaders, together with anyone offering resistance. There is no constitutional right to continue the meeting.

THE CASE LAW

Permit ordinances and proprietary rights apart, there is generally no power to prohibit a public meeting in advance. The law concerning "unlawful assembly" has been outlined above and the legal question which must now be considered is whether a meeting which is lawful in itself may become unlawful simply because it may cause hostile listeners, who object to the purpose of the participants in a particular meeting, to break the peace? In order to answer this question it is necessary to summarise the law on this point.

The short answer is that if a public meeting is held in a lawful and peaceable manner it does not become unlawful merely because disturbances are caused by hostile onlookers.⁷ If, however, the speaker speaks or otherwise conducts himself in such a manner as to *provoke* or *incite* other people to commit a breach of the peace he commits an offence which renders him liable to arrest and places the meeting in the category of an "unlawful assembly".⁸

One somewhat controversial case in England is authority for saying that if a policeman reasonably apprehends a breach of the peace he can request the speaker to desist, and stop the meeting.⁹ In

⁵ R. v Vincent (1939) 9 C. & P. 109.

⁶ State v Butterworth, 142 A.57, 104 N.J. Law 79, 58 A.L.R. 744

⁷ Beatty v Gillbanks (1882) 9 Q.B.D. 308.

⁸ Wise v Dunning (1902) 1 K.B. 167, 71 L.J.K.B. 165

⁹ Duncan v Jones (1936) 1 K.B. 218

these circumstances, refusal on the part of the speaker to desist constitutes obstruction of a police officer in the execution of his duty, thus rendering the speaker liable to arrest.¹⁰

The American view is that peaceable assembly for lawful discussion cannot be made a crime and the right to free assembly cannot be abridged merely because persons threaten to stage a riot, or because peace officers believe or are afraid that breaches of the peace will occur if the rights are exercised.¹¹ It is the generally accepted rule that freedom of assembly may be restricted only to prevent grave and immediate danger to interests which the state may lawfully protect.¹² Thus, when clear and present danger of disorder or other immediate threat to public safety appears, the power of the state to punish is obvious. It was under this view that the Supreme Court upheld the conviction of Irving Feiner for disorderly conduct in Syracuse, N.Y.¹³ This was a 6 to 3 decision, however, and the circumstances of the case were such that it may be interpreted, as Mr. Justice Black said in his dissenting judgment, as approving:

a simple and readily available technique by which cities and states can with impunity subject all speeches, political or otherwise, on streets or elsewhere, to the supervision and censorship of the local police.¹⁴

The decision certainly appears to have broad connotations to the effect that a restive audience, and threats of violence towards the speaker by at least one onlooker, at a public meeting are sufficient to justify its termination by the police.

THE CASES AND THEIR EFFECTS

The leading English case on the point in issue is *Beatty v Gillbanks*, decided in 1882.¹⁵ The circumstances in that case were that the newly founded Salvation Army was in the habit of assembling and marching peaceably through the streets of Weston-super-Mare. A rival body of townspeople who objected to these activities and called themselves the "Skeleton Army", commenced to hold their own parades for the express purpose of obstructing the progress of the Salva-

¹⁰ *Ibid.*

¹¹ Sellers v Johnson C.C.A., Iowa 163 F. 2d. 877, 332 U.S. 581

¹² West Virginia State Board of Education v Barnette, Tex., 63 S.Ct. 1178, 319 U.S. 624; U.S. v Korner D.C. Cal. 56 F. Supp. 242

¹³ Feiner v People of New York (1951) 340 U.S. 315

¹⁴ *Ibid.*, at p. 323

¹⁵ *Supra.*

tion Army marchers. The resulting disturbances in the streets led to the local magistrates binding over the leaders of the Salvation Army to keep the peace. Upon subsequently holding another procession through the streets the Salvation Army leaders were arrested and convicted of "unlawful assembly". On appeal, the Divisional Court reversed the conviction for, in the words of Judge Field:

There was nothing in their conduct when they were assembled together which was either tumultuous or against the peace. But it is said that the conduct pursued by them on this occasion was such as, on several previous occasions, had produced riots and disturbances of the peace, and terror to the inhabitants; and that the appellants, knowing that when they assembled together such consequences would again arise, are liable to this charge. Now I entirely concede that everyone must be taken to intend the natural consequences of his acts, and it is clear to me that if this disturbance of the peace was the natural consequence of the acts of the appellants they would be liable, and the justices would have been right in binding them over. But the evidence set forth in this case does not support this contention; on the contrary it shows the disturbances were caused by other people antagonistic to the appellants, and that no acts of violence were committed by them . . .

What has happened here is that an unlawful organisation has assumed to itself the right to prevent the appellants and others from lawfully assembling together, and the finding of the justices amounts to this, 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. There is no authority for such a proposition.¹⁶

Another reversal of conviction in similar circumstances took place on appeal in the case of *R. v Justices of Londonderry*.¹⁷ Thus, it is well established that a lawful assembly does not normally become unlawful merely because the audience is hostile. On the other hand, if the words or actions used by the participants at a public assembly are such as to provoke a breach of the peace as a natural consequence of those words or acts, then such participants must be taken to have

intended the consequences. This presumption was alluded to by Judge Field in the *Beatty v Gillbanks* judgment and was well illustrated twenty years later in the case of *Wise v Dunning*.¹⁸ Wise was an ardent Protestant who had on several occasions held meetings in a district of Liverpool which was known to have a strong Roman Catholic population. Not content with merely expounding his religious beliefs he used violent and provocative language concerning the Pope, and spoke in very derogatory terms about the Roman Catholic Church. Breaches of the peace ensued, and Wise was bound over by the stipendiary magistrate to keep the peace. On appeal the Divisional Court unanimously upheld the decision of the magistrate, distinguishing the present case from *Beatty v Gillbanks* on the grounds that the appellant's own conduct had been provocative and such as to incite people to commit a breach of the peace.

Another variation of this type of situation was present in the case of *Duncan v Jones*, in 1936.¹⁹ Mrs. Duncan was about to hold a meeting outside a training center for unemployed when she was forbidden to do so by Jones who was a police officer. The reason for the police officer's action was that a disturbance in the training center about a year earlier had been attributed to a speech made by Mrs. Duncan, and it was feared that similar results might occur again. Mrs. Duncan ignored the police officer's request and upon attempting to start the meeting she was arrested and charged with "obstructing a police officer in the execution of his duty" contrary to the Prevention of Crimes Acts, 1871 and 1885. The prosecution did not allege any obstruction of the highway, nor any incitement or provocation to commit a breach of the peace. Mrs. Duncan was convicted on the grounds that she must have known the probable consequence of her holding a meeting would be a disturbance, and that she was not unwilling that such a consequence should ensue; that Jones reasonably apprehended a breach of the peace and it was, therefore, his duty to prevent the meeting; and that by attempting to hold the meeting Mrs. Duncan obstructed Jones in the execution of his duty. The Divisional Court upheld the conviction, but it seems probable that the application of this decision should properly be limited to those cases where it can be shown that the defendant has been

¹⁶ *Beatty v Gillbanks*, supra at p. 314

¹⁷ *R. v Justices of Londonderry* (1891) 28 L.R. Ir. 440

¹⁸ *Wise v Dunning*, supra

¹⁹ *Duncan v Jones*, supra

responsible for causing a disorder on a previous occasion.²⁰

In the same year that the case of *Duncan v Jones* was decided, but spurred by the troublesome demonstrations of Fascist and similar organisations, an important statute was promulgated concerning the conduct in England of public meetings and processions. This was the Public Order Act, 1936. The first two sections of the act prohibit quasi-military organisations and the wearing of uniforms in connection with political objects. The third section provides police powers for the preservation of public order on the occasion of public processions (i.e. power to direct the route to be followed and to forbid entry to certain areas), whilst the fourth and fifth sections prohibit the possession of offensive weapons at public meetings and processions, and also the use "in any public place or at any public meeting" of "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."²¹

Although as a general rule, public meetings cannot be prohibited in advance,²² section 3 of the Public Order Act provides a procedure by which, in certain circumstances, the police in London and other urban districts may effectively prohibit all *processions* for a period not exceeding three months. Although this is a very useful police power, there are adequate safeguards within the section to prevent its abuse, and in practice the power is seldom used. The tendency is to control rather than prohibit public processions.

The fact that there is no absolute freedom of assembly in England was reaffirmed by Lord Hewart C. J. when, in upholding the conviction of Mrs. Duncan in 1936, he commented, "English law does not recognise any special right of public meeting for political or other purposes."²³

Even in the United States there is no absolute right of assembly in the public highways, but there have been strong indications that the courts are beginning to favour the notion that a basic right

to speak and assemble in the public streets does exist.²⁴

The principles underlying the decision in *Beatty v Gillbanks* and *Wise v Dunning* undoubtedly apply in the United States. The idea that a police officer's apprehension of a likely breach of the peace is sufficient ground to stop a lawful public meeting (as illustrated by the *Duncan v Jones* decision), however, is quite contrary to the American view which prevailed without question until the *Feiner* case in 1951. Even in upholding the conviction of Irving Feiner, Chief Justice Vinson said:

We are well aware that the ordinary murmurings and objections of a hostile audience cannot be allowed to silence a speaker, and are also mindful of the possible danger of giving overzealous police officials complete discretion to break up otherwise lawful public meetings.²⁵

In this particular case, however, there was no evidence of actual violence on the part of anyone participating in the meeting and the court itself emphasised that Feiner was "neither arrested nor convicted for the making or the content of his speech. Rather it was the reaction which it actually engendered."²⁶ Thus, although there is little doubt that Feiner could have been justifiably arrested for the contents of his speech, this was not in issue before the courts and the effect of the decision appears to be that a police officer may lawfully stop a public meeting if the audience is inflamed and agitated, and if, as in this case, even a single member of the audience threatens violence towards the speaker.

The facts of the case were that Feiner, a young student at Syracuse University, while addressing a crowd including Negroes, through a loud-speaker system from a box on the sidewalk, made derogatory remarks concerning various public officials and indicated that Negroes should rise up in arms and fight for equal rights. One onlooker, who was accompanied by his wife and two children, spoke to one of the two police officers present and threatened to remove the speaker from his platform unless the police would stop him from speaking. Other members of the audience had also seemed to be angry, but Feiner ignored the requests of the

²⁰ E. C. S. WADE AND G. GODFREY PHILLIPS, CONSTITUTIONAL LAW, (London: Longmans, Green & Co., 1960), p. 534

²¹ Public Order Act, (1936) section 5.

²² Mention has already been made of American permit ordinances, and similar bylaws exist in some parts of England. The Trafalgar Square Act, 1844, for instance, requires the consent of the Minister of Works before a public meeting can be held in Trafalgar Square.

²³ *Duncan v Jones*, supra

²⁴ *Hague v C.I.O.* 307 U.S. 496 (1939); *Kunz v State of New York* 340 U.S. 290 (1951); see also GLENN ABERNATHY, THE RIGHT OF ASSEMBLY AND ASSOCIATION, (Columbia: University of South Carolina Press, (1961), pp. 50-82.

²⁵ *Feiner v People of New York*, supra at p. 320

²⁶ *Ibid*, pp. 319-320, per Chief Justice Vinson.

police to stop speaking and was subsequently arrested.

It appears, therefore, that the police in America, as well as in England, have been afforded by the courts considerable discretion in deciding when a public meeting should be terminated.

In the light of this brief summary of the law concerning the conduct of lawful assemblies consideration will now be given to some recent incidents where disturbances at lawful meetings have placed the police in an almost intolerable position and, so far as the English incidents were concerned, caused expressions of extreme concern from responsible members of the public. It was following a succession of such occurrences that on August 2, 1962, Sir Robert Cary, in the English House of Commons, asked the Home Secretary if he was aware that "... experience of the disorders following recent meetings and processions of certain organisations in London and Manchester shows that there is a danger of a breakdown of law and order on a wide scale if such incidents are repeated..."²⁷ On this occasion there was strong agitation by Members for the amendment of the Public Order Act, 1936, for the purpose of more clearly defining the meaning of "abusive words" in section 5. Support was urged for a Bill which had been introduced on August 1, 1962, to add after the words, "... abusive words or behaviour..." the words, "or words inciting hatred of any racial group of Her Majesty's subjects."²⁸ The Bill has not been passed, but it is significant that many Members of Parliament feel that the time has come to change the law in the interests of public order and safety. Some of the incidents which caused such deep anxiety will now be described.

English Disturbances. The summer of 1962 produced in England an almost unprecedented series of public disturbances in connection with the open air meetings of extremist political bodies, namely the British National Party, the National Socialist Movement, and the Union Movement. The meetings of these groups were announced in advance, and all had as their principal theme the dissemination of anti-Semitic and anti-Negroid propaganda.

The first of these meetings at which a major breach of the peace occurred was held in Trafalgar

Square on Sunday, July 1, 1962, and was described in one newspaper report as follows:

A rally held by the National Socialist Movement in Trafalgar Square yesterday afternoon ended in fighting between members of a crowd of several hundreds shouting "Down with Fascism" and "Remember Belsen" and members of the party who were attempting to leave the square.

Throughout the meeting the speakers... were continually shouted down and pelted with pennies, tomatoes, and rotten eggs, by an overwhelmingly hostile crowd of some 2,000. The few people who did raise their hands in an earnest Nazi salute looked distinctly nervous.

Twice the crowd, inflamed by the speeches from the platform—several women were in tears—broke through a police cordon guarding the base of Nelson's Column. On both occasions Acting Chief Superintendent Gilbert [commanding the police detachment] stopped the meeting to allow tempers to cool but, after brief conferences with Mr. Jordan [leader of the movement] who claimed that the disturbances were only caused by a "handful of Reds", the meeting continued.²⁹

At this meeting twenty members of the crowd were arrested for breach of the peace, conduct likely to cause a breach of the peace, or assault on the police. The leader, Colin Jordan, and the secretary, John H. Tyndall, of the National Socialist Movement were subsequently convicted for using "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," contrary to section 5, of the Public Order Act, 1936.³⁰ Part of the case for the prosecution was that during the course of the speeches at the meeting Jordan had said, "On September, 3rd., 1939, the blackest day in British history, the long and intensive Jewish campaign was crowned with success and the Jews of the world rejoiced," and Tyndall had said, "In our democratic society the Jew is like a poisonous maggot feeding on a body in an advanced state of decay."³¹ Both were convicted, Jordan being sentenced to two months' imprisonment and Tyndall to six weeks' imprisonment. On Septem-

²⁷ *Ibid.*, July 1962, p. 12, col. 3

²⁸ *R v Jordan and Tyndall*, Bow Street Magistrates' Court, reported in the LONDON TIMES, August 1962, p. 4, col. 4

²⁹ *Ibid.*

²⁷ LONDON TIMES, August 1962, p. 10, col. 6

²⁸ *Ibid.* August 1962, p. 6, col. 5

ber 4, 1962, however, the London Sessions Appeal Committee allowed Jordan's appeal against his conviction and, in allowing Tyndall's appeal against sentence, substituted a fine of ten pounds (approximately \$30) for the sentence of six weeks' imprisonment. Mr. R. E. Seaton, Chairman of the Appeals Committee, stated that the speeches of the two men had been very closely considered and whereas that of Jordan was "very, very near the borderline but just fails to step over the edge. Tyndall's speech is much more vitriolic."³² The Metropolitan police prosecutors asked the Sessions court to state a case for the decision of the Divisional Court and, in ruling that Jordan's conviction should stand, the Queen's Bench Division held that for the purposes of section 5 of the Public Order Act a person must take his audience as he finds them, even assuming "that the persons present are a body of hooligans" and, if the words that he uses to a particular audience, or part of such audience, are in fact likely to provoke a breach of the peace, then he is guilty of an offence under section 5.³³ It would be wrong to ignore the feelings of some members of the audience merely because they were intent on breaking up the meeting whatever words the speaker used. Jordan's words were intended to be, and were, deliberately insulting to the body of persons who were being restrained by the police.

In this case, doctrines which were particularly obnoxious to the British public had been expressed but it is noteworthy that, judging by the newspaper reference to "tomatoes and rotten eggs", some members of the audience had gone to the meeting fully prepared to cause a disturbance. This factor was all the more significant in the subsequent disturbances of the summer because there was no evidence at these later meetings of inflammatory language on the part of the speakers. The unpopularity of the organisers was due merely to the antecedents of the movements concerned and their associations with European Fascism. Nevertheless, it was evident that certain elements of the audiences at these meetings were present for the express purpose of breaking up the meetings. So numerous and effective were these people that the police, in their desire to avoid bloodshed, had little alternative but to stop the meetings soon after they had commenced. The particular difficulty facing the police at these incidents was the

fact that the vast majority of onlookers were antagonistic to the organisers of the meetings even before a word was spoken, and it is interesting to note that the police were later criticised for the use of police dogs in dispersing troublemakers.

In the second major incident of the summer (a meeting of Sir Oswald Mosley's Union Movement, in Trafalgar Square, on Sunday, July 22, 1962), fifty-five people were arrested and the meeting stopped by the police, of whom there were three hundred present, after only fifteen minutes. In the words of a newspaper report which appeared the following day:

Although the meeting was not due to begin until 3 p.m. a crowd estimated at 6,000 had almost filled the square by 2:30. Many of these were sightseers but a group of 200 or 300 at the front, held back by the police cordon surrounding the plinth, had clearly come to break the meeting up.³⁴

The next disturbance, again involving the Union Movement, occurred some two hundred miles from London, in connection with a procession and meeting in Manchester. In the presence of two hundred and fifty policemen and a crowd of 4,000 people the meeting was abandoned on police advice after seventeen minutes of continuous uproar during which forty-seven arrests were made. The following graphic description of the scene is typical of reports which appeared in the national newspapers the following day:

Police had to clear a way as the procession quickly degenerating into a protracted brawl, slowly inched... toward the mining suburb of Bradford...

The site ear-marked for the meeting... had been railed off overnight and the surging crowd of people, many chanting "Down with Mosley", found themselves penned by police with linked arms in narrow streets and back alleys... with only a dozen or so surviving marchers in the centre to listen to the speeches....

Even with the aid of a dozen mounted men, police had difficulty restraining the surging crowds. A number of arrests were made to the fury of the watchers, with struggling youths being manhandled to waiting police vans.³⁵

Two days later, London again became the focal point when Sir Oswald Mosley addressed a Union Movement rally in Dalston, East London—an

³² LONDON TIMES, September 5, 1962, p. 5, col. 1

³³ *Jordan v Burgoyne* (1963) 2 all E.R. 225, per Lord Parker, C.J.

³⁴ LONDON TIMES, July 23, 1962, p. 10, col. 6

³⁵ *Ibid*, July 30, 1962, p. 6, col. 1

area with a large Jewish population. A petition delivered on the preceding day to the Commissioner of the Metropolitan Police by the Mayor and Mayoress of Hackney (the Metropolitan borough concerned), two members of Parliament, and four members of the London County Council, calling for a ban on the meeting had proved abortive. This was necessarily so because the Commissioner has no power to ban a meeting in advance even though, once started, a meeting can in most cases be stopped if it appears likely that a breach of the peace is about to take place.

Once more, a large detachment of some two hundred foot police and ten mounted policemen was present, but the meeting was stopped after only three minutes of the main address. Attempts had been made to rush the platform; rotten fruit, stones, pennies, and pieces of wood were thrown; and a local Alderman and his wife were struck with an iron bar as a result of which they both required medical treatment. Following the fracas, in respect of which twenty-one people were later fined a total of thirty-three pounds ten shillings (approximately \$100), it took the police another hour to clear the road.³⁶

Yet another Union Movement meeting in Dalston on September 1, 1962, was stopped by the police after only two minutes of the main address, due to the activities of a hostile audience. On this occasion, despite the presence of nearly 1,000 policemen and the arrests of more than forty people, several people were injured.³⁷

American Disturbances. The same constitutional problem has resulted in disturbances of similar magnitude in the United States in recent years.

On August 27, 1949, a Paul Robeson concert was arranged to take place on private property near Peekskill, New York. Following adverse newspaper reports that the concert was to be sponsored by a Communist front organisation, the local inhabitants were exhorted to show their determined disapproval of the concert. Certain inhabitants who adopted a civil libertarian attitude towards the concert were subjected to terrorisation, and on the night of the concert hostile groups blocked the roads into the area where it was to be held. The result was that only a limited number of would-be concertgoers were able to reach the actual concert area. There was no evidence of violence by the concertgoers themselves, but a

melee took place at the site, during which one person was stabbed and considerable property was burned. Although the sponsoring organisation had made an advance request for assistance from the New York State Attorney General there were no more than six policemen on the scene until two hours after the disturbance had commenced. The indications were that a greater show of police strength earlier in the evening might well have avoided the more serious consequences of the incident. The Grand Jury, however, later vindicated the police from all blame, holding that based on previous experience the police precautions had been adequate.

The Robeson concert was rearranged amid a blaze of publicity with the result that an explosive atmosphere prevailed on the day when the second attempt was due to take place. Some 5,000 anti-Robeson demonstrators were faced by 15,000 Robeson supporters who had brought along with them their own guards. On hand to control these rival factions were 750 members of the county and state police departments. Violence was avoided until after the performance when the police were quite powerless to adequately cope with the rioting that took place. Despite the efforts of the police many cars were damaged and more than a hundred people injured.³⁸

A more recent example of peaceful demonstrators being deprived of their freedom of assembly due to the activities of a hostile group occurred in the March, 1960, anti-segregation demonstrations by college students in Montgomery, Alabama. On March 1, 1960, a thousand Negro students under police supervision walked two abreast and in a peaceable manner from the campus to the capitol where they sang the Lord's Prayer and the National Anthem. On this occasion there was no disturbance of any kind. A week later, however, when the students gathered to repeat their orderly demonstration, this time from a church to an anti-segregation prayer meeting, they were faced by a crowd of 5,000 hostile whites. Several hundred policemen were in attendance, and they prevented a riot by confining the Negro students to the area of the church. Even so, the would-be marchers were attacked by their antagonists, and it was only with the assistance of mounted deputies and fire trucks that the two groups were separated and eventually dispersed.³⁹

³⁶ *Ibid*, August 1, 1962, p. 10, col. 6

³⁷ *Ibid*, September 2, 1962, p. 6, col. 7

³⁸ Abernathy, *op. cit.*, pp. 43-48

³⁹ *Ibid*, pp. 38-40

Sensible police action in this case averted a serious crisis, but in doing so it denied to 1,000 American citizens their inherent freedom of assembly and expression.

THE ROLE OF THE POLICE

Throughout the foregoing discussion it has been abundantly clear that the whole problem under consideration revolves around a conflict between two principles of the common law. On the one hand is the notion that a lawful act does not become unlawful merely because the doing of it may cause another to do an unlawful act, and on the other is the duty of a police officer to prevent any breach of the peace which he reasonably apprehends. When a large and unruly mob attends a public meeting with a determination to break up the proceedings, the police are faced with a very real dilemma. The police, in both England and the United States, are well trained in their duties as the guardians of civil rights, and so far as freedom of assembly is concerned they are instructed that their main responsibility is to protect individuals and groups in the exercise of this constitutional right. The powers apparently afforded by the courts in *Duncan v Jones* and *Feiner v People of New York* are very seldom invoked, but when a police detachment is overwhelmingly outnumbered by a disorderly crowd at a public meeting, and the situation seems likely to become beyond control, the instinctive reaction of the officer in charge is to take the only remaining course within his legal powers to avoid a major breach of the peace. At which point can a compromise be made? In the one extreme, the rights of the meeting organisers must be protected at all costs. Such costs would indeed be high, both in terms of police manpower and, if the hostile audience were sufficiently determined, in bloodshed. The other extreme would be to stop any public meeting as soon as a police officer present reasonably apprehends a breach of the peace. Once again, the cost would be high, but this time in terms of the denial of civil liberties.

The leading cases, discussed above, have drawn the line of compromise at various points between these two extremes, and in two cases in particular the courts have favoured the extreme measure placing the onus on police discretion.⁴⁰

In enforcing a branch of the law where there

⁴⁰ *Duncan v Jones*, supra; *Feiner v People of New York*, supra.

are so many variables, what then are the police to do? The first task is to consider the nature of the language used by the speakers, together with the circumstances or place in which the meeting is held. If violence or a breach of the peace on the part of the audience would be the natural and foreseeable consequence, it is clearly the duty of the police to stop the meeting and consider legal proceedings against the speakers and organisers. It is equally clear, however, that in the absence of such a degree of provocation on the part of the speakers, or organisers, the duty of the police is to do everything within their power to ensure that the meeting is allowed to proceed, and to take strong action against troublemakers. It may be necessary to deploy large numbers of police officers at the scene, and in the case of a large gathering of people it would be advisable for one squad to be specially detailed to locate and arrest the ring-leaders of any groups inciting other members of the audience to violence. It was illustrated in London during the 1962 disturbances that such large scale arrests can be facilitated by the police holding in readiness a small fleet of private buses for the transportation of prisoners from the scene. When it becomes apparent in all communities that such determined action will be taken by the police against all unruly mobs, and that the enormous police expenditure involved will have to be met from local taxes, the townspeople will gradually realise that the best method to deal with unpopular speakers is to shun their meetings altogether. No one is under any obligation to attend such a meeting.

Circumstances frequently arise where a breach of the peace in connection with a procession or meeting can be confidently anticipated by a Chief of Police. It then becomes his duty to exercise any legal powers vested in him to control such procession or meeting. The consistent and unprejudiced use of existing bylaws and permit ordinances to restrict provocative meetings, together with the stringent enforcement of obstruction ordinances and the arrest of all persons guilty of disorderly conduct, are devices by which the current law allows the police to minimise the risk of public disturbances. Formal censorship, in the exceptional cases where it is permitted by law, is far more satisfactory than the risk of extensive civil disorder. It is essential, however, that in the training of police officers, great emphasis should continue to be placed on their duty, in the case of a

lawfully conducted meeting, to aim their controlling and preventive activities at potential trouble-makers in the audience rather than towards the innocent organisers who are merely exercising a constitutional right.

The disturbances already described are ample evidence of the immense difficulty facing the police in carrying out their duties in such situations. The fact remains, however, that if mob violence is allowed to become accepted as an unofficial censor of public speeches and assemblies, our much lauded freedom of assembly is completely valueless.

People responsible for disorder at public gather-

ings are generally motivated either by an inherent antisocial complex or by intense passion arising from the assembly itself. In either case a nominal punishment is not likely to be sufficient to deter the offender from repeating his violent conduct at subsequent meetings of a similar nature. On the other hand, exemplary punishment will not only deter the individual concerned but will also indicate to other citizens, who may be tempted to take the law into their own hands, that a keen sense of joint responsibility is felt by the police and the judiciary in maintaining the status quo of civil rights.