Political Protest, Mass Arrest and Mass Detention: Fundamental Freedoms and (Un)common Criminals

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A poster depicting upraised fists and the words, "No Justice. No Peace".[1] has a prominent place in author Debra Parkes' office. The mass arrest and detention of over 1,105 people during the G20 summit in June 2010,[2] including author Meaghan Daniel, prompted us to reflect on the connections between justice and peace and in particular, between peaceful protest, policing, detention and the justice system. One of the more striking facts to emerge from the largest mass arrest in Canadian history is that well over 800 of those arrested were never charged with any offence.[3] The basis for most of those arrests was a virtually unrestrained police power of arrest for "breach of the peace," an arcane law that Canada inherited from the English common law and then preserved in sections 30 and 31 of our *Criminal Code*, R.S.C. 1985, c. C.46. Pursuant to this power, some 714 people were detained, mostly in the temporary holding facility (the Prisoner Processing Centre) usually for just under 24 hours, before being released.[4] The record breaking weekend of mass arrests and temporary detention of people described as "innocent bystanders" and "peaceful protestors" provoked an ongoing conversation about the criminalization of protest. It is our hope to extend this conversation beyond these (un)common criminals to the "every day" processes of criminalization and imprisonment that go largely unquestioned in this country. For one of us, the event and its aftermath were very personal. For both of us, the issues are both legal and political. This co-written piece is an attempt to sort through and share our thoughts about the G20 summit weekend and its still-unfolding aftermath.

In the sections that follow, we share the narrative of Meaghan's arrest and detention while participating as a legal observer during the G20 summit weekend. In the course of telling that story, we briefly reflect on two themes: (1) the criminalization of dissent, including through the power to arrest for "breach of the peace" and the apparent impotence of constitutionally entrenched rights to free expression and peaceful assembly to restrain such police power; and (2) connections between the experiences and activism of the G20 detainees

* The authors thank David Meagher for his research assistance and the Social Justice and Human Rights Research Project (Faculty of Law, University of Manitoba) for its support of this research.

and the thousands of other prisoners in Canada – these "common criminals" with whom progressive social movements have not always seen common cause. This is a moment for the 1,105 journalists, students, lawyers, unionists, concerned citizens and bystanders-become-activists to join the social movements for global justice, penal abolition, and prisoners' rights.

ARREST ON EASTERN AVENUE: WHOSE STREETS?

I was arrested outside the Prisoners Processing Centre in the early morning of June 27, 2010. I was there to show support for those arrested the previous day, to find a missing friend, and to act as a legal observer. I arrived to a loud but peaceful protest, mostly confined to the sidewalk across from the Centre. There was a band playing, people dancing, and people visiting and people chanting.

The police presence seemed to be continuously growing. At 1:40 a.m. there was an announcement from a protester who said:

> *I just got a word from the police officers. They don't want us to be out here anymore. In 20 minutes or so someone is going to come out and they're going to read us a proclamation telling us that we have to go home. But we're not, you know what, we're not breaking any laws here, we're having a fucking dance party. So we're going to keep dancing. Look it's important, the world is watching right now, we want them to see who we really are, which is we are peaceful protesters here in solidarity with our friends and family who were taken hostage by this racist state. So when they try and take us, if they try and take us, just keep fucking dancing.*

So we did. However, a number of us decided that while we wanted to show solidarity and strength, we also wanted to attend the protests tomorrow. We decided to wait until the "proclamation" was read, and then follow police orders and leave. In the meantime, we continued to dance, and chant with our fellow protesters, "This is not a riot! This is a dance party!"

The police presence became incredible and intimidating. We were surrounded on all sides with riot police two to three deep. The police then announced: "For your own safety, you are now requested to leave this area". People immediately shouted back the obvious question: "How?"

After a pause during which an organizer attempted to engage with them, we heard this:

> *Ladies and Gentlemen. Ladies and Gentlemen, this is the second police warning. The behaviour of some members of this demonstration is causing a breach of the peace. It has been determined that reasonable grounds to arrest exist and that force may be used. For your safety, you are now being requested a second time to leave this area.*

We were still surrounded on all sides at this point. People immediately started yelling, "We don't have any way to leave, you've blocked off all of the exits!" and "How do we get out?"

Eventually, the police opened up a small exit for us to travel away from the area. I was toward the back of the dispersing group, as I was trying to observe what was happening to those who might choose to stay. In the end, everyone chose to leave. However, I only managed to get a block and a half away when the police cut the slowest 40 or so of us off from the rest of the group and surrounded us again.

There was a great deal of confusion. We asked them to let us leave, and promised we would move faster. They began to arrest us one by one.

Each of us were put in zip tie handcuffs and led over to the opposite sidewalk. I was searched and the first thing they found was my Law Society ID card. Its discovery started a flood of comments. My arresting officer said that I probably did not need him to read me my rights. I told him I wanted everything I was entitled to. He then informed the surrounding officers that I was a lawyer. They asked me not to sue them. I said I could not promise anything.

My arresting officer told me if it had not been for those burning cars that they would not be treating us like this. He also said I was just going to be detained for a little while and then let go if I continued to act reasonably. I had two questions in my mind. Was this not "arbitrary detention"? And what the hell did reasonable mean anymore?

After spending the rest of the night in the detention centre, sometime the next morning I was told that I had been arrested for causing a breach of the peace.

FUNDAMENTAL FREEDOMS AND THE CRIMINALIZATION OF DISSENT: THIS IS WHAT DEMOCRACY LOOKS LIKE

My (Meaghan's) experience of arrest and detention during protest is far from unique. The Movement Defence Committee (MDC), the Canadian Civil Liberties Association (CCLA) and various other police accountability bodies (both established and *ad hoc*) collected hundreds of similar stories from entirely peaceful protestors and bystanders who were arrested, detained, searched, and/or subjected to other "public order policing" tactics such as the kettling of approximately 300 people on the corner of Queen Street and Spadina Avenue.[5]

The right to peaceful protest is not clearly guaranteed in the *Canadian Charter of Rights and Freedoms*. Instead, dissenters rely on a collection of rights listed under the heading "fundamental freedoms": that of conscience and religion, of expression, of peaceful assembly and of association. It is hard to imagine a collection of rights more important (in theory, at least) to a liberal democracy than those that purport to protect the right to be critical of government.[6] As McLachlin C.J. and LeBel J. stated in *Retail, Wholesale and Department Store Union, Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd*:

> The Court, moreover, has repeatedly reaffirmed the importance of freedom of expression. It is the foundation of a democratic society… The core values which free expression promotes include self-fulfillment, participation in social and political decision making, and the communal exchange of ideas. Free speech protects human dignity and the right to think and reflect freely on one's circumstances and conditions. It allows a person to speak not only for the sake of expression itself, but also to advocate change, attempting to persuade others in hope of improving one's life and perhaps the wider social, political, and economic environment.[7]

The Supreme Court of Canada has said in a number of freedom of expression cases that political speech is at the "core" of the s. 2(b) guarantee.[8]

However, certain forms of political speech (those that could be labeled direct action or civil disobedience) from certain ideological stand points (those on the political Left) have historically been repressed through controversial and often violent police tactics.[9] The nature of the assembly and speech as oppositional to government clearly matters in terms of the police response. For example, the massive police presence mobilized in relation to the Toronto G20 protests (nearly 20,000 officers to police demonstrations that attracted 30,000 people) dwarfs the relatively restrained police response to the anticipated crowds of drunken hockey fans gathering in Vancouver in June 2011 (300 officers deployed for an anticipated crowd of at least 100,000), and an anti-abortion protest on Parliament Hill, attended by over 10,000 people (including 20 Members of Parliament) in May 2011 attracted a minimal police response.[10] Another striking example of the criminalization of dissent can be found in the extremely restrictive bail conditions imposed on activists arrested in advance of the G20 protests, including that they not plan, attend, or participate in any public demonstration (which has been defined as any public event where political views are expressed).[11]

On liberalism's own terms, the fact that those who assemble and march do so with the risk of facing police practices of kettling, arrest and detention should raise serious concerns about our commitment to these "fundamental freedoms." Yet the right to peaceful assembly has rarely figured in *Charter* litigation and has not been given any meaningful content by Canadian courts.[12] For example, in *Reference re Public Service Employee Relations Act (Alta.)* (1987), a case in which the Supreme Court held that the Charter did not protect a right to strike, it was simply stated that freedom of peaceful

assembly is closely related to freedom of expression. It is perhaps for this reason that the CCLA calls freedom of peaceful assembly the "maligned freedom." While freedom of peaceful assembly is often held to be derivative of freedom of expression or association, it is more than this. It is, or should be, about protecting the right to collective direct action.

Most disturbingly, at the same time as the freedom of peaceful assembly has been given little to no content in Canadian law, the government has been increasing the discretionary powers of the police. This is not unique to the Canadian context. In the United Kingdom:

> Despite the positive promise of the Human Rights Act 1998 (HRA) the courts have been slow in practice to increase the scope of rights available to protestors. Parliament, on the other hand, has been quick to hand out new statutory powers – under the Terrorism Act 2000, the Criminal Justice and Police Act 2001, the Anti-terrorism, Crime and Security Act 2001 and the Criminal Justice Act 2003 - which all increase the scope of police to prevent the free movement of protestors and other members of the public, and the free expression of political protest.[13]

These police powers, including specifically the power to arrest for "breach of the peace" have been increasingly utilized to criminalize protest.[14] Naomi Klein has described the escalation of security tactics to counter protesters at recent summits, noting the ways that the policing at these events has normalized violence to the point that it is the expected outcome, not a rare event. In such an environment, police legitimate the use of surveillance, pre-emptive arrests, intrusive searches, designated "free speech zones," indiscriminate use of tear gas and pepper spray in the name of "security".[15] These tactics create what has been described as a "creeping criminalization, even terrorization, of dissent."[16]

In the United Kingdom, there has been more litigation to date over the limits (such as they are) on "public order policing". Following the use of kettling at the May Day or International Workers' Day demonstrations in 2001, a peaceful demonstrator brought a challenge to the courts, claiming for false imprisonment, and for breach of the claimants' rights of liberty enshrined under section 5 of the European Convention on Human Rights.[17]

Explicitly stating that the police cordon was pre-emptive to anticipated violence from all of the protestors (as the police held the belief – apparently reasonable in the eyes of the court – that all of the demonstrators were

about to commit a breach of the peace), the House of Lords found that the resulting seven hours of detention were largely due to the actions of the protesters, and not to the overreaction of the police:

> The judge held that it was not practicable for the police to release the crowd earlier than they did. For them to have done so earlier would have been a complete abnegation of their duty to prevent a breach of the peace and to protect members of the crowd and third parties, including the police, from serious injury. The policy that was communicated to police officers was that they should seek to identify and release those who obviously had nothing to do with the demonstration but were caught up in the cordon because they had just happened to be in Oxford Circus. This was subject to their discretion to release individual demonstrators…[18]

In the end, the police tactic of "kettling" protesters on the streets received the imprimatur of legality by the House of Lords, though this decision is now under appeal to the European Court of Human Rights.[19] It was later stated by Denis O'Conner, Her Majesty's Chief Inspector of the Constabulary, that that the House of Lords ruling in Austin had been misunderstood by police, specifically in the context of reviewing police use of the tactic at G20 summit protests in London.[20]

By 2011, the use of the tactic was again before the courts. In *Moos & Anor, R (on the application of) v. Police of the Metropolis*,[21] the court was considering the actions of the police at the G20 summit protests in London. During the summit protests, a peaceful Climate Camp demonstration was kettled by police to prevent violent protestors who were being dispersed from another area from joining the group. It was anticipated that if these violent protestors joined the peaceful group, a breach of the peace would result.[22] The Court condemned this use of the kettling tactic finding that there was no reasonably apprehended breach of the peace, which justified the protestors' containment. While there was a risk that violent protestors would join the peaceful camp, this risk was not imminent.[23]

In the Canadian context, the underlying power of arrest for breach of the peace, outlined in section 31 of the *Criminal Code*, is as follows

> 31. (1) Every peace officer who witnesses a breach of the peace and every one who lawfully assists the peace officer is justified in arresting any

> person whom he finds committing the breach of the peace or who, on reasonable grounds, he believes is about to join in or renew the breach of the peace.
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> (2) Every peace officer is justified in receiving into custody any person who is given into his charge as having been a party to a breach of the peace by one who has, or who on reasonable grounds the peace officer believes has, witnessed the breach of the peace.

While Canadian case law requires that "breach of the peace" must be an act that results in actual or imminent threatened harm to person or property,[24] the hundreds of arrests for breach of the peace, including my (Meaghan's) own took place well after the much-publicized burning of police cars. However, my and other first-person accounts indicate that the police were relying on these events – well removed in time and place – as justification for the mass arrests.

Serious questions arise about the use of this police power and its relation to freedom of expression and freedom of peaceful assembly, under the Canadian *Charter*. However, as noted above, these questions have not been brought before the courts. The main problem associated with this law becomes clear when one looks at the mass arrests at the G20 summit: it requires a discretionary call by the police that the protest is not peaceful, or rather, that there are immanent threats to persons or property. Indeed, the Law Reform Commission of Canada recommended abolishing this arrest power because it is based on an "exceedingly vague standard".[25] With relatively little guidance from the courts and the legislatures, the police are left to determine whether a protest is peaceful, or not.

And they often get it wrong. The case of *Laporte v Chief Constable of Gloucestershire Constabulary* concerned a protest at an airbase in Gloucestershire.[26] Passengers in buses headed towards the protest were intercepted by police, and made to return to London with police escort. The police explained their actions by stating that some of those on the buses were intent on causing a breach of the peace. The House of Lords held that the common law entitled and bound police officers and citizens alike to seek to prevent, by arrest or action short of arrest, any breach of the peace occurring in their presence or which they reasonably believed was about to occur. However, if no breach of the peace had actually occurred, a

reasonable apprehension of an imminent breach of the peace was required. As there had been no indication of any imminent breach of the peace the police were held to have interfered with the right to demonstrate at a lawful assembly. This decision is a relatively rare example of judicial limits being placed on public order policing.

There is a sense in some legal circles and in the popular media that Canadian courts have been strong protectors of civil and political rights – and, to a certain extent they have: freedom of expression has been given a very broad interpretation ("any attempt to convey meaning")[27] and certain laws limiting certain kinds of expression have been struck down by the Supreme Court.[28] In addition, the Charter has probably had the largest impact overall in the context of legal rights of accused persons on arrest and detention (rights to counsel, rights against unreasonable search and seizure, etc.), largely due to the operation of section 24(2) of the Charter which provides for the exclusion from a subsequent criminal trial of some evidence obtained in violation of the Charter,[29] although even those gains have been limited.[30]

However, the level of commitment to civil liberties has always been uneven in Canada. Douglas Hay once noted in Canada has "a history of suppression of civil liberties inferior to few jurisdictions in the common law world"[31] before observing that Canadian judges have not played the role of strong defender of civil liberties in many of these instances: "The assumption that judiciaries are particularly willing to contest oppressive laws in such circumstances is one belied by much of the historical record and by recent responses in other countries."[32]

And in the aftermath of the G20 summit weekend, many submissions were directed at the fact that the criminalization of dissent by the police was nothing new. As the Movement Defence Committee stated to the House of Commons Standing Committee on Public Safety and National Security investigating the G8 and G20 meetings:

> The G20 policing and resulting civil, political and human rights violations was not a random blip in our country's otherwise solid record of respecting the rights of its citizens and residents. It was, in fact, the most obvious and recent example of a long tradition of state interference against social justice critics of government policies, a pattern that seems to have become even more pronounced with the current Harper Conservative government.[33]

CAGING PROTEST: INCARCERATION IN THE EASTERN AVENUE DETENTION CENTRE

I entered the PPC in the middle of the night, sometime after 2:00 a.m. During my 20 or so hours of detention I was shuffled through four different cells, I was searched three different times, and I met approximately 75 women.

The conditions of the cages were hard. The lights were harsh. The temperature was kept very low. Many were kept in handcuffs the entire time. Some cages were crowded to the point that not everyone had room to sit on the floor. Some of us lacked for food and water. All of us lacked for information. It was impossible to sleep. It was difficult to keep calm.

I have since joked that I was "working" the entire time that I was in those cages. In truth, sitting on the privilege of being a lawyer in jail, I couldn't help but feel responsible to address, or rather, be incredibly angry at the rights abuses I was witnessing. I attempted to advocate for one lone young offender, in one of these cages filled with adults, who had not had any contact with her parents since being picked up the day before. I attempted to advocate for another woman who was being denied a request to find her belongings and bring her medication. I attempted to explain the justice system as best as I could to those who had questions, but I wasn't sure my answers were the answers anymore.

It was in my first cage that I was recognized for the first time. I had spent my articling year as a clerk of the Superior Court of Justice. A number of the guards in the PPC were in fact court security staff. Each time I was recognized and acknowledged by a guard who knew me, I had to wonder if my fellow cellmates were suspecting me of being the least clever informant ever.

In all I was recognized four times. The fourth guard was someone I had had extensive contact with (daily throughout a four month trial) and was shocked to see me inside. Because he knew me, he helped me take care of the women in the cage with me. But when Craig found me, about 15 hrs into the experience, and in my fourth holding cage, I didn't have to argue, I just had to ask.

I was able to get medical attention for a woman with a migraine headache (due to panic and dehydration) who was in total detained for over 30 hours. I was able to get medical attention for another woman who had been injured by police and had bruising and swelling around her eyes and upper arms. I was able to get food for a woman who had not eaten in over 24 hours because of her allergies.

I was also able to provide some advice to those experiencing panic attacks, having spent a year at a crisis shelter as a counsellor in a previous life. However, I was myself panicking. The women began breaking down in their efforts to cope. I had one woman brought into the cell who had been walking toward Queen's Park, the "designated free speech" zone, with a dust mask hanging from her pants pocket to protect her in the event of tear gas. This lovely young woman from Montreal broke down as she told me of the humiliation of being strip-searched. I cried too.

At the same time, many would occasionally join the relentless resilience: my cellmates were singing, chanting, railing against the guards and shaking the cages so they could hear our rage, negotiating for what we needed and deserved and had a right to, and building friendships both within the cages and through the walls.

The one thing I could not get was a phone call. Demands for lawyers were coming from all directions. I was informed on a number of occasions that I had a right to counsel. However, as the exasperated guards explained, when they designed the mass detention centre, they only put in eight phones. It took 20 hours before I was finally allowed to phone a lawyer. I was eventually released roughly half an hour later, around 10:30 p.m. on Sunday night.

I did not meet one person, not one, who did anything which even vaguely merited their arrest. People described terrifying police brutality, occurring in locations far from protests. People were given weapons charges for carrying lemon juice and Maalox. People were swept up expressing their dissent and stating their causes in a peaceful way.

In the days following, I realized that this event had changed me. I alternated between strength, anger, resolve, laughter, and tears. I was apprehensive at the sight of police. I spent a great deal of time helping friends find other friends, find their belongings, understand the system, and understand the legal recourses they can take against the police and the government. I eventually left Toronto for a while.

One of my coworkers said something that helped. On a walk, he reminded me that typically, police wield their power against the powerless. This time they abused organizers, activists, peaceful protesters, journalists, professors, lawyers and law students. And he was right.

Of all of the police actions on the weekend, this was their biggest mistake. Along with many bystanders they brought together a group of

people already committed to the movement, in the most literal sense, by detaining us together, but also by giving us a common experience.

"POLITICAL PRISONERS" AND "COMMON CRIMINALS": MAKING THE CONNECTIONS

For those interested in social justice, there is no question that it is important to highlight the massive scale on which *Charter* rights and civil liberties appear to have been breached over G20 Summit weekend in Toronto. The stories of mere bystanders caught up in the "kettle" on Spadina Avenue or arrested and detained for hours at the temporary Eastern Avenue Detention Centre serve to demonstrate the heavy-handed way that the police reacted to the protests. Descriptions of the utterly inhumane, chaotic, and overcrowded conditions of confinement – the lack of toilet paper or doors on porta-potties, the shivering on concrete floors without blankets, the lack of nutritional meals – are jarring and, it is hoped, raise concern in the minds of even the most complacent members of middle-class society. Yet there are important similarities with, and connections to, the policing and practices of imprisonment that go on every day across Canada. The pages of this

Journal spanning more than two decades are full of descriptions of prison conditions like these and, in some cases, much worse, written by prisoners who do not have the privilege and access to media that many of the G20 detainees have experienced.

As such, it is worth reflecting on the occasionally expressed sense of outrage that the G20 detainees were treated like "common criminals".[34] The people who fill Canada's prisons and jails have (with a few exceptions) been abandoned by politicians and social movements on the political Left. In the last federal election campaign, the New Democratic Party platform's only mention of the criminal justice system was a commitment to hire more police officers.[35] Meanwhile, new prisons are being built and others are being expanded as Parliament passes increasingly punitive laws.

We see a similar form of selective outrage in the reaction to U.S. Wikilieaker Bradley Manning's detention in solitary confinement. Jean Casella and James Ridgeway at Solitary Watch have documented the extent to which "progressive writers – and their readers, if comments are any measure – have gone to some lengths to distinguish Bradley Manning from the masses of other prisoners being held in similar conditions. Whether explicitly or implicitly, they depict Manning as exceptional, and therefore less deserving of his treatment and more worthy of our concern."[36] They go on to note that "[m]ost prisoners held in solitary confinement are, by design, silent and silenced. Most of their stories – tens of thousands of them – are never told at all. And solitary confinement is now used as a disciplinary measure of first resort in prisons and jails across the country, so its use is anything but exceptional". The same is unfortunately true of solitary confinement in Canada.[37]

The arrest and detention of over a thousand protestors on the G20 weekend in Toronto opened a small window on the harms of imprisonment in Canada. The legal actions that are underway provide an opportunity for "rebellious lawyering" and connections to struggles for prisoners' rights and penal abolition. Rebellious lawyering involves a "non-heirarchical relationship between lawyer and client… and an exploration of non-legal collective action to fight oppression".[38] Very few prisoners' rights cases, particularly those that might deal with more systemic issues, are brought before the courts, due in part to the lack of funding for such cases and the related dearth of lawyers who are committed to practicing in this area. Fewer still are successful in bringing about significant change and enforcement

of basic human rights for prisoners.[39] Yet advocating for independent accountability and oversight of prisons, as well as of police forces, is a necessary part of social justice struggles in Canada. At the same time, the resistance of these institutions to reform demonstrates the need for broader, systemic critiques (i.e., of our society's use of imprisonment more generally and of the social and economic policies that create poverty and conditions of insecurity).

In the interest of making and strengthening these connections, we recall the approach taken by the pioneering Canadian prison abolitionist, Claire Culhane, who advocated tirelessly for individual prisoners but also for systemic change in a way that was connected to other social justice struggles and movements. The letterhead of the Prisoners' Rights Group she co-founded read, "We can't change prisons without changing society, we know that this is a long and dangerous struggle. But the more who are involved in it, the less dangerous, and the more possible it will be".[40]

ENDNOTES

1. The poster was prepared for the Ontario Public Service Employees Union in a 1996 strike. See generally David Rapaport, *No Justice. No Peace.* The 1996 Strike by OPSEU Against the Harris Government in Ontario (McGill-Queens University Press, 1999).
2. Only 278 people were charged over the weekend. See Canadian Civil Liberties Association, "G-20 Mass Arrest by the Numbers" (7 July 2010), online at < <http://ccla.org/2010/07/07/g-20-mass-arrests-by-the-numbers/>.
3. Ibid.
4. Ibid.
5. Kettling is a controversial police tactic which encompasses encircling, cordoning off, and detaining for hours groups of non-violent protestors and often unrelated bystanders, with no access to food, water, or toilet facilities.
6. Edmonton Journal v. Alberta (Attorney General), [1989] 2 S.C.R. 1326 at p. 1336, where Justice Cory said of freedom of expression that it "is difficult to imagine a guaranteed right more important to a democratic society."
7. Retail, Wholesale and Department Store Union, Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd., [2002] 1 S.C.R. 156 at p. 172-173
8. See for example, R. v. Bryan, [2007] 1 S.C.R. 527 at para. 81 per Fish J.
9. See generally, Judy Fudge and Harry Glasbeek, "Civil Disobedience, Civil Liberties, and Civil Resistance: Law's Role and Limits," (2003) 41 *Osgoode Hall L.J.* 165 and articles collected in that special issue.
10. Adrienne Telford and Jeff Carolin, "A Tale of Two Police Forces," Toronto Star (26 June 2011).

[11] Jennifer Yang, "Accused G20 Ringleaders Challenge Bail Conditions," *Toronto Star* (23 June 2011).

[12] CCLA, "Looking Back, Moving Forward: Two Months After the G20": <http://ccla.org/our-work/focus-areas/g8-and-g20/two-months-after-the-g20/>.

[13] "The Historic Right to Protest," in *Your Rights: The Liberty Guide to Human Rights*: <http://www.yourrights.org.uk/yourrights/the-right-of-peaceful-protest/the-historic-right-to-peaceful-protest.html>.

[14] Jackie Esmonde, "The Policing of Dissent: The Use of Breach of the Peace Arrests at Political Demonstrations" (2002) 1 *Journal of Law and Equality* 246; Naomi Klein, *Fences and Windows: Dispatches from the Front Lines of the Globalization Debate* (Toronto: Vintage, 2002), ch. 3.

[15] Klein, ibid.

[16] Helen Fenwick and Gavin Phillipson, "The Human Rights Act, Public Protest and Judicial Activism," in András Sajó, ed., *Free to Protest: Constituent Power and Street Demonstration* (The Hague: Eleven International Publishing, 2008) at 189.

[17] Austin (FC) (Appellant) and another v. Commissioner of Police of the Metropolis (Respondent), [2009] UKHL 5.

[18] Ibid. at para. 6-7.

[19] Christian Khan, "Lois Austin takes Kettling Case to Strasbourg", online at <http://www.christiankhan.co.uk/ViewNews.asp?NewsID=171>.

[20] Paul Lewis, "G20 police chiefs were unclear on kettling law, report finds," *The Guardian* (7 July 2009), online at <http://www.guardian.co.uk/politics/2009/jul/07/g20-policing-report-kettling>.

[21] [2011] EWHC 957 (admin).

[22] Moos & Anor, R (on the application of) v. Police of the Metropolis, [2011] EWHC 957 (admin),

[23] Ibid. at para. 59.

[24] R. v. Howell, [1982] Q.B. 416.

[25] Law Reform Commission of Canada, *Arrest* (Working Paper 41) (Ottawa: Law Reform Commission of Canada, 1985) at 62.

[26] Laporte v Chief Constable of Gloucestershire Constabulary, [2007] 2 AC 105.

[27] Irwin Toy v. Quebec (A.G.), [1989] 1 S.C.R. 927.

[28] E.g., Libman v. Quebec, [1997] 3 S.C.R. 569 (declaring invalid a law prohibiting third-party election spending in referendum campaigns) and R. v. Zundel, [1992] 2 S.C.R. 731 (striking down a crime of "publishing false news" which had been used to prosecute Holocaust-denier Ernst Zundel).

[29] James Striboplous, "Has the Charter Been for Crime Control? Reflecting on 25 Years of Constitutional Criminal Procedure in Canada," in Margaret E. Beare ed., *Honouring Social Justice: Honouring Dianne Martin* (Toronto: University of Toronto Press, 2008) at 351.

[30] See, for example, David Tanovich, "The Charter of Whiteness: Twenty-five Years of Maintaining Racial Injustice in the Criminal Justice System" (2008) 40 *Supreme Court Law Review* (2d) 655 (on the lack of progress in addressing systemic racism in the justice system through the Charter).

[31] Douglas Hay, "Tradition, Judges, and Civil Liberties in Canada," (2003) Osgoode Hall L.J. 319 at p. 321-322. See also Hay at p. 322: "… too many judges in past

centuries were all too ready to accept the opinions of the most frightened members of the governments of the day, in part because of their own social formation, role in the state, and political opinions, which overcame doubts about the need for draconian laws".

[32] Ibid., at 322.

[33] (30 November 2010), online at: <http://movementdefence.org/node/32>.

[34] See, for example, Ron MacPherson, "G20 site raised the risk of violence arising," *The Record* (19 July 2010).

[35] New Democratic Party, "Giving your family a break: practical first steps," online at <http://tpcp-canada.blogspot.com/>.

[36] Jean Casella and James Ridgeway, "On Bradley Manning, Solitary Confinement, and Selective Outrage," *Solitary Watch* (2 January 2011) <http://solitarywatch.com/2011/01/02/on-bradley-manning-solitary-confinement-and-selective-outrage/>.

[37] *Annual Report of the Office of the Correctional Investigator 2009-2010*, online at <http://www.oci-bec.gc.ca/rpt/annrpt/annrpt20092010-eng.aspx>.

[38] Michael Diamond, "Community Lawyering: Revisiting the Old Neighbourhood" (2000) 32 *Columbia Human Rights Law Review* 67 at 107. See also Jessica Feierman, "Creative Prison Lawyering: From Silence to Democracy" (2004) 11 *Georgetown Journal of Poverty Law and Policy* 249.

[39] Debra Parkes, "A Prisoner's Charter? Reflections on Prisoner Litigation under the Canadian Charter of Rights and Freedoms" (2007) 40 *U.B.C. Law Review* 629.

[40] "History of Prisoners' Justice Day," online at <http://www.vcn.bc.ca/august10/politics/1014_history.html>.

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