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Chapter 26
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Greg Martin

Introduction

One could argue that social movements are inherently about human rights. Historically, there have been important movements against slavery, racial discrimination and gender inequality, all of which resonate with international law enshrined in the United Nations (UN) *Universal Declaration of Human Rights 1948*. In many respects, human rights reflect citizenship rights, which in the classic formulation of T.H. Marshall (1950) comprise civil, political and social rights. Social movements have been key in securing many of these rights too. In Britain, for example, early welfare movements were organized around what the 1942 Beveridge Report identified as the 'five evils' of disease, want, squalor, ignorance, and idleness. Social movement thinkers have argued that these older welfare movements paved the way for newer movements, which 'operate in and around an already established welfare state system to preserve, extend, deepen and improve service delivery' (Annetts et al. 2009, p. 10). Examples include lesbian, gay, bisexual and transgendered activism, and eco-welfare movements. However, in the current age of austerity, with dwindling welfare provision, it is questionable whether this remains the case, as many contemporary movements have emerged to protest against new forms of precarity and enduring socioeconomic inequality (Martin 2015a, pp. 78–86).

Animal rights activism demonstrates that not all social movements are about *human* rights. Moreover, the rise of neo-fascism in Europe and the emergence of the Tea Party movement in the United States (US) show how movements can be conservative, reactionary and regressive, rather than aimed at positively transforming existing power structures, which have created inequality and other kinds of disadvantage (Martin 2015a, p. 1). What is clear from the literature, however, is that most if not all social movement activity is about identifying and attempting to rectify injustice of one sort or another (Martin 2015a, pp. 56–7). And, in this regard, activists would argue they have a fundamental human 'right to protest' against perceived injustices. Before discussing the nature and scope of protest rights, some intersections of criminology, human rights and protest are explored to contextualize the issues examined in this chapter.

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Criminology, human rights and protest

Murphy and Whitty (2013) argue that if criminology is to engage with the field of human rights in the present, reflection on the history of the relationship between human rights and criminology is needed. Despite longstanding criminological engagements acknowledging the relevance of law and legal institutions in human rights (especially in the international arena), Murphy and Whitty show how some scholars are critical of the influence of the liberal legal tradition in criminology. For instance, Loader and Sparks say liberal criminology's reliance on legal rights 'is limiting because to fall back on legal discourses and institutions is a "form of negative politics", a "fencing in" of contemporary democratic forces' (Murphy and Whitty 2013, p. 577, quoting Loader and Sparks 2011, p. 93). Hence, to Loader and Sparks, 'human rights promote an unhelpful individualism and an "anti-state" oppositionalism, and lead to a liberal criminology that "throws in its lot with legal rather than political constitutionalism"' (Murphy and Whitty 2013, p. 577, quoting Loader and Sparks 2011, p. 93).

In large part, this stance is born of liberal criminologists' fear of 'state power and its potential to inflict suffering on its citizen and meddle with their legitimate rights and entitlements' (Loader and Sparks 2011, p. 93). Indeed, many of those fears have been realized since the terror attacks of 11 September 2001 (9/11), where states have moved to enhance police power, and increase generally the use of criminal law, pre-emptive crime control methods, and surveillance technologies (Martin et al. 2015). Drawing on Dembour's (2012) four ideal types of human rights thinking (natural, deliberative, protest, discursive), this liberal approach to criminological work most resembles the natural human rights school of thought, which places 'a high value on the normative power of human rights and other ethical standards', and seeks 'to preserve their protective function' in the face of penal populism, securitization, and risk society (Weber et al. 2014, p. 75).

Fear of state power or, at least, scepticism as to the motives of the political class, should cause us to reflect that '[t]he institutions which are designed to protect human beings – the state, the law, and the church in particular – are often precisely those institutions which threaten human life by the fact that they enjoy a monopoly of power' (Turner 1993, pp. 501–2). And that is why, argues Turner, '[t]he point about the concept of *human* rights is that they are extra-governmental and have been traditionally used to counteract the repressive capacity of states' (1993, pp. 498–9, emphasis in original). Thus, unlike citizenship rights, human rights cannot (and arguably should not) be tied to the nation-state (Turner 1993, p. 500).

State abuse of human rights has meant that a sizable part of criminology's historical focus has been on state crimes perpetrated by repressive regimes (Murphy and Whitty 2013, p. 570). And this is perhaps one reason why criminologists have appeared to throw in their lot with legal rather than political constitutionalism, since it is through international human rights law that most progress has been made. Moreover, it is here where social movements have had a role in forging international alliances and interacting with key supranational institutions, such as the UN, and transnational non-governmental organizations, such as Amnesty International, and Human Rights Watch (Martin 2015a, pp. 222–49). In this way, the international system provides resources and political opportunities that facilitate the global human rights movement, which is, in turn, able to exert internal pressure domestically on nation-states accused of violating human rights.

The political mobilization of 'comfort women' is an example where '[t]he relative openness of the global political system was crucial for the advancement of the comfort women movement' (Tsutsui 2006, p. 338). Comfort women were subject to systematic sex slavery by the Japanese military during World War 2. While the movement emerged in the late 1980s, it was

not until 1992 that it launched its international campaign, appealing to the UN Commission on Human Rights, 'against the background of the international expansion of women's rights and the emergence of global norms about past human rights violations in the preceding decades' (Tsutsui 2006, p. 337).

Another example is in Argentina where the cause of the Mothers of the Disappeared (*Les Madres de la Plaza de Mayo*) has resonated globally and resulted, among other things, in international actors contributing 'in a concrete way to the establishment of new democratic institutions to insure human rights accountability' (Brysk 1993, p. 279). This has been described as a 'boomerang effect', which denotes 'a world-level process in which oppressed citizens use international channels to publicize human rights violations and pressure their governments and multinational corporations' (Tsutsui and Wotipka 2004, p. 595). Similarly, although the signing of the North American Free Trade Agreement represented a dark side of globalization, Muñoz (2006) argues it also drew attention to the plight of people living in the south of Mexico and the collective action of the Zapatistas, thus creating political opportunities for human rights reform within the country. Inspired by the Zapatistas, the global justice movement is another example of a movement that springs up periodically to oppose global neoliberalism at high-profile international events (Martin 2015a, pp. 236–7). Alternatively, activists conceive of themselves as part of a global movement for social justice by opposing global forces at a local level, in what is described as 'globalization from below' (Martin 2015a, p. 231).

The local–global relationship has also been regarded pertinent to relations between international human rights law and social movements, where Nash (2012) has shown how, regardless of the influence of international opportunity structures on state responses, national law remains an important means of institutionalizing human rights norms. This is because states are the ultimate guarantors of international human rights, which are interpreted by national courts. Hence, institutionalizing human rights is not an entirely top-down process, which, Nash argues, is why we need to adopt a middle way approach that brings the state back in when discussing human rights law. However, just as this approach takes issue with top-down perspectives, it is also critical of the multiplicity of social movements that demand human right 'from below', because, Nash (2012, p. 808) contends, human rights law is state-centric, 'in that it is virtually exclusively through states that international human rights law is made and enforced'. This is no less the case in respect of legal determinations about the 'right to protest', which is recognized, to varying degrees, in domestic contexts, both in the common law and in statutes.

Right to protest

As stated earlier, all social movement activity is premised on an assumed 'right to protest'. However, whether and to what extent this right exists is the matter of some contention across common law jurisdictions. The right to protest is essentially an amalgam of the right to free speech, and the right to assemble peacefully in public. Historically, these allied rights have gained some recognition in the English common law. In the late Victorian period, *Bonnard v Perryman* contains an early expression of a right to free speech. In that case, the court considered 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'.[1] After this, according to Mead (2010, p. 4), there is a clear line of cases establishing a right of freedom of expression, culminating in 2000 in the House of Lords case of *Simms*, where Lord Steyn was of the view that, '[i]n a democracy it is the primary right: without it an effective rule of law is not possible'.[2]

The lineage of a common law right to demonstrate, protest or assemble is more complex than the right of freedom to speak. In 1936, Lord Hewart CJ stated, 'English law does not recognize any special right of public meeting for political or other purposes'.[3] However, in the 1970s, in the case of *Hubbard v Pitt*, Lord Denning MR asserted in his dissenting speech that 'the right of protest is one aspect of the right of free speech'.[4] His Lordship relied in part on a prior report by Lord Scarman, which advocated for recognition, albeit qualified, of the right to peaceful assembly and public protest (McGlone 2005, p. 276). Although Lord Denning's opinion was of limited application – as he insisted the right to demonstrate was secondary to the need for good order and passage of traffic, and that 'passage' was inconsistent with protest – it nevertheless reflected 'a growing acceptance of protesting as a normal feature of the wider political landscape' (McGlone 2005, p. 276).

In 1999, in *DPP v Jones and Lloyd*, a majority of the House of Lords recognized a right to peaceful public assembly (in the highway). However, Mead (2010, p. 5) argues the case was 'not a clear-cut ringing endorsement of a general right of protest and assembly against all-comers – though not necessarily absolute – in all places and at all times'. Indeed, it was only Lord Hutton who recognized, as a general proposition, the common law right for members of the public to assemble together to express views on matters of public concern, as 'one of the fundamental rights of citizens in a democracy'.[5]

In the United Kingdom (UK), reliance on a common law right to protest, assemble and demonstrate has now effectively been superseded by the *Human Rights Act 1998* (UK), which protects the right to peaceful protest by incorporating into domestic law Articles 10 and 11 of the *European Convention on Human Rights* (ECHR). For Mead (2010, p. 25), this amounts to a situation in the UK where 'there is now a fully-fledged right to protest [which] encompasses aspects of the rights of free speech under Article 10 and peaceful assembly contained within Article 11'. In this way, discussion of whether there is a right to protest at common law would appear redundant (Mead 2010, p. 6).

Beyond the UK, other jurisdictions have their own issues in respect of recognizing a right to protest. In the US, freedom of speech and the right to peaceable assembly are guaranteed under the First Amendment to the Constitution, although as a US federal judge recently ruled, that does not protect a right to take photos or record videos of police, unless the filming is done in the spirit of protest. This is a decision that is in line with prior proposals in California to protect citizens who record or photograph police actions, without obstructing them from performing their duties,[6] but out of step with later plans in Arizona to make it illegal to shoot close-up videos of police on the basis it would put officers in danger by distracting them while engaging with suspects.[7]

In Canada, freedom of expression and freedom of peaceful assembly are protected under Section 2 of the Charter of Rights and Freedoms, although research there has shown how protest policing, for example, has involved 'the systematic violation of constitutional protections against arbitrary arrest and detention . . . as well as protection against abusive searches' (Fortin et al. 2013: 41). Indeed, this tied to what has been observed as a marked erosion of rights and freedoms since 9/11, not only in Canada but also in the US, where commentators have argued the *USA PATRIOT Act 2001* is a source of human rights incursions and constitutional breaches, and in the UK, where the *Justice and Security Act 2013* has been regarded as one of the latest challenges to the British Constitution, civil liberties and due process rights (Martin 2014; Martin and Scott Bray 2013; Martin et al. 2015).

It is well known that Australia is the only western democracy without a national human rights statute or Bill of Rights (Charlesworth et al. 2003, p. 424), and there is only limited

provision in the Australian Constitution to protect individual rights and freedoms. Some of those rights are express rights, such as freedom of religion, right to vote, and trial by jury. Other rights, such as freedom of political communication, are implied from the system of representative government provided for in the Constitution.[8] In Australia, then, while there is no right to protest at common law, the courts have accepted such a right exists as part of the democratic system of government (McGlone 2005, pp. 274–5).

The absence in Australia of a federal human rights instrument is largely the result of the fact that the drafters of the Constitution believed the doctrine of representative and responsible government would be sufficient to protect individual rights and freedoms (Martin 2014, p. 534). More recently, Victoria and the Australian Capital Territory have enacted human rights legislation protecting the right of peaceful assembly, although those human rights are not absolute, and 'are subject to such reasonable limits as can be demonstrably justified in a free and democratic society' (Gotsis 2015, p. v). Moreover, in Queensland, the *Peaceful Assembly Act 1992* (Qld) provides expressly for a statutory right to assembly, even though commentary suggests statutory rights such as this do not necessarily provide greater protection for the right to assembly (Gotsis 2015, p. 34). In New South Wales (NSW), by contrast, Part 4 of the *Summary Offences Act 1988* (NSW), which relates to public assemblies, makes no mention of the right to assembly. Nevertheless, the objective of the Act is to facilitate cooperation between police and protestors (Gotsis 2015, p. 14).

As we shall see in the next section, this approach is referred to as the 'negotiated management' of protest, which many believe is now the dominant mode of public order policing. But others disagree, arguing that current protest policing style is increasingly coercive and authoritarian. Indeed, recent events in NSW have led opposition parties to claim heavy-handed police tactics at anti-mining demonstrations have undermined the right to peaceful protest, which has, in turn, caused the state government to consider new legislation to counteract 'illegal protest activity' and safeguard business interests (Gotsis 2015, p. 1), including up to seven years in jail for protestors locking onto mine equipment (Robertson 2016). Similarly, Tasmania has introduced legislation seeking 'to "rebalance the scales" between the right to protest and the rights of business to create economic opportunities and develop the economy' (Gotsis 2015, p. 35). Likewise, Western Australia has enacted laws 'to deter environmental protestors from locking on to equipment at mining and logging sites or taking other obstructionist action' (Gotsis 2015, p. 36). These developments reinforce the importance in capitalist societies of what is considered below as the *political economy of protest*, which appears more than ever to be accompanied by an increased recourse to criminal law to deal with public protest: what is referred to later as *criminalizing dissent*.

Policing protest

Numerous developments that have occurred since 9/11 pertaining to the intersection of criminology, human rights and protest involve the regulation and control of protest by police, who are granted power to do so at common law but are increasingly given authority in statutes. Perhaps unsurprisingly, in this context, there has been an 'increasing conflation of direct action with terrorism' (Mead 2010, p. 380). In the UK, that has resulted in police being given stop and search powers, which under Section 44 of the *Terrorism Act 2000* (UK), for example, do not require reasonable suspicion (Mead 2010, p. 380). While these powers have been used to stop and search protestors and journalists at demonstrations in London, police have also arrested and charged protestors with 'violent disorder' offences under the *Public Order Act 1986* (UK) (Gilmore 2010, p. 21).

Globally, high-profile 'mega-events' such as World Trade Organization, World Bank, G8 and G20 meetings have all been subject to increased securitization since 9/11. Although this is a process that started after the Battle of Seattle in 1999, it intensified after the terror attacks in 2001 (Martin 2011). The Asia-Pacific Economic Cooperation (APEC) meeting held in Sydney, Australia, in 2007 was an example where police were given enhanced powers to deal with public order at a one-off international event. Subsequently, however, those powers were incorporated into the *Major Events Act 2009* (NSW), which is an amalgamation of laws specially enacted for major events, such as the APEC meeting, the 2000 Olympics Games, and the 2003 Rugby World Cup (Martin 2011, p. 34). This generic piece of legislation has been seen as oppressive and trespassing on individual rights and civil liberties, since it provides that penalties will apply to the person who *is about to contravene* a provision of the Act (Martin 2010, p. 164). Laws like these have been regarded as symptomatic of the normalization of exceptional measures since 9/11, which is a process that has transformed police function from reactive to pre-emptive (Martin 2010). In the current era, this becomes the usual means of dealing not only with terrorists, dissidents, and protestors, but also organized crime gangs, and refugees; often through the use of control orders and secret procedures (Martin 2014, 2015b).

Accordingly, a feature of contemporary policing is 'exceptional consent', which subjugates citizen rights and the rule of law to the imperatives of security and a politics of privileging the rights of the state (De Lint and Hall 2009, p. 267). That not only affects everyday police practice but also protest policing style, which assumes the form of 'strategic incapacitation' to include pre-emptive arrests, the demarcation of protest-free zones, and the corralling or 'kettling' of protestors (Martin 2011, p. 28). As one of the most controversial police tactics, kettling was held to be lawful by the House of Lords in *Austin v Commissioner of the Police for the Metropolis*.[9] Subsequently, the European Court of Human Rights agreed there was no deprivation of liberty under Article 5(1) of the ECHR, although the Court limited its findings to the 'specific and exceptional facts of this case',[10] also holding that kettling should not be used 'to stifle or discourage protest, given the fundamental importance of freedom of expression and assembly in all democratic societies'.[11]

Endorsement of the technique of kettling nevertheless seems to have been perceived by police to sanction its much wider use (Mead 2010, p. 355), such as during the G20 protests in London in 2009, which resulted in the death of innocent passer-by, Ian Tomlinson, after he was assaulted by a police officer (Martin and Scott Bray 2013). Arguably, the fallout from the Tomlinson affair could explain the relatively timid police approach during the English riots of 2011, although, as Wainwright et al. (2012, pp. 32–3) say, the reverberations from the riots have influenced the attitude of courts to public order policing, forging an acceptance that kettling may be employed in limited situations.

The apparent normalization of kettling and other repressive tactics gainsays the view of those who observe a trend towards a more democratic protest policing style; a 'negotiated management' approach whereby police and protestors engage in dialogue with one another (see Martin 2011 for discussion). By contrast, it has been argued the current style of policing, particularly at international mega-events, constitutes a 'global protest policing repertoire' (Martin 2011), which tends to involve increased use of authoritarian and wholly undemocratic tactics (Gilmore 2010). Nevertheless, 'the current mode is an effective mixture of hard- and soft-line tactics, including the use of "non-lethal weapons" as well as laws, codes, regulations, and public relations strategies that attempt to control protest spaces directly and indirectly' (Fernandez 2008, p. 15).

Policing of space is linked to the increased privatization of public space in urban settings under global neoliberalism (Martin 2011). That has been illustrated most recently by Occupy, which, in London, set up physical encampments 'to identify the geography of capitalism', and to reassert 'the spatial dimensions of exclusion and inequality by forcing society to recognize that capitalist accumulation happens in certain places, and that these places can be named, located and objected to' (Pickerill and Krinsky 2012, pp. 280–1). The police's harsh treatment of Occupy also serves as another illustration of the increased securitization of society over the last decade, as well as 'an ongoing erosion of the right to dissent for much longer', which is why, say Pickerill and Krinsky (2012, p. 285), 'the very act of confronting the police has a central place in what could be called the "Occupy" repertoire'.

Political economy of protest and criminalizing dissent

The erosion of civil liberties and human rights since 9/11 has included the attrition of protest rights, which have been impacted by two significant developments. The first pertains to what might be described as a *political economy of protest*. Particularly at high-profile international events, protest has to be contained and controlled (even nullified) to provide the appearance of 'total security' (Martin 2011, p. 29). Especially in urban space that is not privatized, demonstrations are carefully orchestrated and managed by state authorities to facilitate 'place promotion', advertising 'global cities' as safe and secure to reassure and attract tourists and corporate investment (Martin 2011, pp. 37–8). Among other things, this means restricting the freedom of movement of known activists, as well as socially and economically marginalized groups, such as the homeless, whose presence challenges sanitized images of cites as sites free from decay and danger (Martin 2011, p. 31).

Just as the political economy of protest reveals as fragile the idea that we live in free liberal democratic societies, where public dissent and peaceful assembly are assumed rights, so too does the *criminalization of dissent*, which was alluded to earlier when we looked at the provision for pre-emptive measures at protest events in New South Wales. Indeed, it has been said that the limits imposed on the right to assembly by the criminal law here are so extensive that, '[a]n analysis which referred to every possible demonstration offence would constitute a veritable summary of much of the criminal law' (Bronitt and Williams 1996, p. 315), including, among other things, offences of breach of the peace, obstruction, offensive conduct, affray, unlawful entry and damage to property (see Gotsis 2015: 22–31). Criminalizing dissent is also indicated in the propensity of authorities to conflate public protest and terrorism (mentioned above), which is especially easy to do in the post-9/11 context where a generalized culture of fear and anxiety means politicians are able to exploit public insecurity about law and order, which they can use for political advantage (Martin 2011, p. 37). The protest–terrorism nexus was highlighted recently when the Australian government published a radicalization awareness kit, which warns that violent extremism, such as radical environmentalism, can grow out of involvement in the 'alternative music scene, student politics and leftwing activism' (Australian Government 2015: 11).

An example that highlights some of these developments in protest policing was evident in Queensland, when it hosted the G20 summit in Brisbane and Cairns, 15–16 November 2014. In preparation for the event, the state government introduced the *G20 Safety and Security Act 2013* (Qld). This statute was by no means unusual, and, in many respects, it aped legislation enacted ahead of the 2007 Sydney APEC meeting. Among other things, the Queensland Act provided for: police searches, including strip searches, in security areas (ss 23–25); arrest without warrant, and detention if the person is charged with an offence under another Act (s. 79); and presumption against bail for those arrested for assault of a police officer, discharging a

missile at a police officer, or generally otherwise disrupting the G20 meeting (s. 82) (Galloway and Ardill 2014, p. 6).

The G20 laws cannot be seen in isolation, however. They formed part of the broader populist agenda of the Queensland government, led by State Premier Campbell Newman, which had as its centrepiece a raft of measures designed to deal with the serious organized crime of 'bikies' (outlaw motorcycle gangs). Legislation here includes the *Vicious Lawless Association Disestablishment Act 2013* (Qld) (VLAD), Section 7(1) of which imposes:

> mandatory sentences of 15 years' imprisonment in addition to the original sentence for a declared offence on a 'vicious lawless associate', such as a bikie club member, and an extra 10 years (that is, 25 years on top of the original sentence) for a vicious lawless associate who was an office bearer of the relevant association at the time or during the commission of the offence.
>
> *(Martin 2014, p. 535)*

Although granting police extraordinary powers at large international events is not unusual, what is worrying about the situation in Queensland is the potential for those laws to interact with legislation directed at bikies:

> If for example an otherwise peaceful (and lawful) assembly turns violent, there is the possibility for people to be charged with affray, one of the offences listed as a trigger for operation of the *VLAD Act*. Carrying out such an act with three others deemed to be participants in a serious crime then renders the accused a participant in a criminal organization. This would attract the additional mandatory sentences.
>
> *(Galloway and Ardill 2014, p. 6, emphasis in original)*

Notwithstanding the fact that Queensland provides a statutory right to peaceful assembly, it has been argued that what has occurred there is an affront to the doctrine of representative and responsible government, which, as we saw earlier, is a lynchpin of Australian constitutionalism (Martin 2014). First, the idea of representativeness is something of a misnomer, given Queensland's unicameral system (where there is no upper house to act as a check on power exercised by the government and executive branch); the fact that the anti-bikie laws were rushed through, bypassing parliamentary committee and public consultation processes; and despite claims made by the state's then Attorney-General that 70 per cent of Queenslanders supported the new laws, the Newman government secured its overwhelming parliamentary majority with 49.66 per cent of the overall vote in the 2012 state election (Martin 2014, pp. 536–7). It has been argued the idea of responsible government is also inappropriate in the Queensland case, which highlights the dangers of 'overcriminalization'; that is 'an increased recourse to criminal law and penal sanctions to solve particular problems that may be better addressed through alternative means, such as increasing state resources or allocating them more efficiently' (Martin 2014, p. 537).

Conclusion

Despite being an extreme example, the Queensland case demonstrates what we saw earlier as liberal criminologists' suspicion of the motives of politicians, and fear of state power to erode citizen rights and freedoms. However, while interest in human rights abuses has tended to focus on state coercion and violation of civil liberties, the policing of high-profile demonstrations also

highlights the political economy of protest, and the private interests involved in controlling these events. Although there is an increasing convergence of private and state interests in this respect, the state will intervene to criminalize protest, whereas private corporations use civil litigation to contain resistance and prevent criticism of their activities that undermine human rights and damage the environment. An example are Strategic Lawsuits Against Public Participation or SLAPPs, which are being used across western democracies not to acquire damages but to silence protest and instil fear of civil action in the minds of activists (Anthony 2009).

It would seem then that public protest is getting hard to do in societies that profess to be democratic and support human rights. This is especially so for Muslims in the post-9/11 era, who, fearing their criticism of western governments' foreign policy might be misconstrued, and indeed that they may be subject to criminal charges under anti-terrorist legislation, are now less likely to participate in traditional modes of political activism, such as street protests (Kundnani 2014, p. 199). Indeed, this reflects arguments made by liberal criminologists writing from the natural human rights perspective (mentioned above), who say that:

> an absence of human rights protections in relation to certain security practices designated as 'preventive' is 'unsafe', particularly in a context where the burdens of these policies fall mainly on minorities who cannot necessarily expect to be protected via political processes. *(Weber et al. 2014, p. 75)*

However, the idea that public dissent is becoming less easy to do is also of wider concern, given populations in liberal democracies display a generalized apathy towards political participation and civic engagement, and a deep-seated suspicion of political elites (Martin 2015a, pp. 2–3). For some, social media and new digital technologies provide hope to beleaguered activists. We saw this during the Arab Spring of 2011, which spread virally through peoples' use of Facebook, Twitter and YouTube. Although some campaign organizations, such as GetUp! in Australia, are focused almost exclusively on digital activism (Vromen 2015), commentary on the Arab Spring (and Occupy) highlights the fact that protest in actual public spaces was just as important as mobilization in virtual spaces (Martin 2015a, p. 217).

Despite widespread disenchantment with traditional modes of political engagement, the state nevertheless remains a key player in many social movement struggles. Indeed, as Nash (2012) argues, nation-states and domestic courts remain important guarantors and interpreters of international human rights. However, even state actors now realize that, like activists, they need to embrace digital technologies to foster public engagement in political processes. Disillusionment with politics is particularly prevalent among young people, although they are perhaps better placed than any other cohort to take advantage of opportunities provided by digital forms of political participation (Vromen et al. 2014). Recently, this potential was recognized in UK debates over intergenerational injustice associated with the unfunded promises baby boomers have made to themselves, which young people and subsequent generations will have to pay for in taxes.

In 2012, baby boomers took advantage of a British government initiative introducing a website for registering e-petitions, which promised that those reaching 100,000 signatures would be passed to a House of Commons backbench committee. Boomers garnered enough signatures to trigger a backbench debate, calling for a Minister for Older People. Although they lost, the government initiative hinted at the potential of digital democracy for campaigns over intergenerational fairness, where, it has been suggested, Generation Y might also petition 'for their own minister to represent their long-term interests, not least to pursue mechanisms to counter baby boomers' innate talent for kicking the financial can down the road' (Johnson

2015, p. 8). This is but one example demonstrating how future campaigns over human rights and injustice will likely involve greater citizen participation via digital media.

Notes

1 *Bonnard v Perryman* [1891] 2 Ch 269 (CA) at 284.
2 *R v Secretary of State for the Home Department; ex parte Simms* [2000] 2 AC 115 (HL) at 125.
3 *Duncan v Jones* [1936] 1 KB 218 at 222.
4 *Hubbard v Pitt* [1976] QB 142 (CA) at 178–9.
5 *Director of Public Prosecutions v Jones and Lloyd* [1999] 2 AC 240 (HL) at 287.
6 See 'California moves to protect citizens' right to record, photo police', 8 April 2015, available at: https://www.rt.com/usa/247981-california-recording-cops-reprisal-protections/.
7 See 'Arizona lawmaker introduces bill to criminalize filming police at close range', 11 January 2016, available at: https://www.rt.com/usa/328547-arizona-police-filming-bill/.
8 *Australian Capital Television v Commonwealth* (1992) 177 CLR 106; *Lange v Australian Broadcasting Corporation* (1997) 175 CLR 520.
9 *Austin v Commissioner of the Police for the Metropolis* [2009] UKHL 5.
10 *Austin v United Kingdom* ECtHR, 15 March 2012 at [68].
11 *Austin v United Kingdom* ECtHR, 15 March 2012 at [68].

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