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AND THE RIOT ACT WAS READ!

ABSTRACT

A brief history of the law of crowd control which takes the *Riot Act* of 1715 as its centrepiece and recounts the measures taken to suppress public disturbances — in particular, raising the *posse commitatus* by hue and cry — and traces the gradual decline of that institution and the eventual resort by the State, during the nineteenth century, to military force to quell riots.

When someone says that they read the Riot Act or had the Riot Act read to them, we all know what they mean; for one reason or another someone has behaved in a way that impacts adversely on others or themselves, so they are cautioned as to the antisocial nature of their behaviour and advised to stop immediately or face greater sanction. The expression allows us to convey, without descending to detail, that a confrontation took place and a warning was given. Clearly the meaning conveyed by the expression in contemporary society bears no relationship to any literal interpretation that it could be given; it does not describe some strange disciplinary ritual involving the reading of an Act of Parliament. So, why then do we *read the Riot Act*?

Like so many other expressions that have passed into our idiom, to 'read the Riot Act' is an expression that has its origins in our history, and particularly our legal history. *Brewer's Dictionary of Phrase and Fable* identifies the origins of the expression as deriving from the *Riot Act* (1 George I, st 2, C.5).[1] The long title to that Act states that it was '[a]n Act for preventing Tumults and riotous Assemblies, and for the more speedy and effectual punishing the Rioters'(sic). It was an Act for the preservation of the peace passed at a time when police forces, such as we have

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1 Revised by I H Evans (Centenary Edition, 1970); The Act was passed in 1714 and came into force on 1 July 1715. King George I succeeded Queen Anne who died in 1714. At the time it was feared that the accession of George I may lead to widespread uprisings by the Jacobites. Accordingly, the *Riot Act* was introduced as a means of preventing this by prohibiting disorderly mobs from gathering. The *Riot Act* remained on the statute book in England until 1967. Whilst it was commonly known as the *Riot Act*, that title was not conferred on the Act until the passing of the *Short Titles Act, 1896*. It was also a law enforcement measure adopted by many of the colonies. For example, in South Australia an almost identical provision appeared in the *Criminal Law Consolidation Act, 1876* (39 & 40 Victoria, No. 38 ss 300–01). This provision, which became s 244 of the *Criminal Law Consolidation Act, 1935-1975* was only repealed in 1992 by s 7 of the *Statutes Amendment and Repeal (Public Offences) Act, 1992* (No. 35).

now, did not exist. In seventeenth and eighteenth-century Britain law enforcement was primarily the responsibility of the constable and the watchmen.[2] These were the only men charged with the duty to prevent crime and apprehend criminals and it largely remained this way in the United Kingdom until 1829 when legislation was first passed paving the way for the creation of the modern police force.[3] The constable and the watchman were not part of an organised body of police and were relatively few in number compared to the area and number of citizens for whom they were responsible.[4] As a means of law enforcement, the constable and the watchman were hopelessly inadequate and ineffectual in the large English cities that continued to grow and become more complex as a result of the industrial revolution.

The *Riot Act* of 1715 prescribed that where 12 or more persons comprising an unlawful, riotous and tumultuous assembly disturbed the public peace and did not disperse within one hour of being commanded to do so, those persons comprising the assembly were each guilty of a felony 'without Benefit of Clergy, and the Offenders therein shall be adjudged Felons, and shall suffer Death as in case of Felony without Benefit of Clergy'.[5] Clearly the penalty was particularly grave and, no doubt, intended to operate as a sufficient deterrent to would be rioters who would have been well aware of the relative impotence of the constable and the watchman when confronted by the mob. In fact, compared to the Tudor Acts that dealt with the suppression of riots, the penalty was now considerably more severe.[6] However, as Lord Mansfield, the Lord Chief Justice of England, commented in *R v Kennett*, the Act was both 'a step *in terrorem* and of gentleness'.[7] The draconian

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2 Sir James Fitzjames Stephen, *A History of the Criminal Law of England*, Vol 1 (1883) Chapter VII, 194–7.

3 See 10 Geo. 4, c.44 and the reforms of Sir Robert Peel as referred to in W S Holdsworth, *A History of English Law* (3rd ed, 1923) Vol XIII, 235–7. Of course, prior to this there were some steps taken toward the formation of a police force, such as the Bow Street Runners assembled by Sir Henry Fielding. In fact, the inadequacy of the *Riot Act* as a means of suppressing riots, as demonstrated by the Gordon Riots of 1780, positively contributed to the debate that led to the creation of the modern police. See L Radzinowicz, *A History of English Criminal Law and its Administration from 1750, Vol 3: The Reform of the Police* (1968) Chapter 4, 89ff.

4 With respect to the history of the constable and the watchman, see, generally, James Stephen, *New Commentaries on the Laws of England* (8th ed, 1880) Book IV, Ch 10. See also Sir James Fitzjames Stephen, above n 2, Ch VII.

5 1 George I, st 2, C.5.I.

6 Sir J F Stephen, above n 2, Chapter VII, 202–3.

7 5 Car & P 282, 295: 172 ER 976, 984. Kennett was the Mayor of the City of London during the Gordon Riots of 1780. He was charged with three counts of disregarding his duties under the *Riot Act*. His trial was presided over by the Lord Chief Justice of England, Lord Mansfield. Interestingly, during the course of the Gordon Riots the Lord Chief Justice's own house was targeted by the rioters and destroyed.

nature of the penalty was offset by the 'gentleness' to be found in the Act which was manifest in the condition that before persons partaking in a riotous and tumultuous assembly of greater than 12 in number could be seized, apprehended and taken before the Justices, the assembly had to be warned in the prescribed form by a Justice, Justice of the Peace, Sheriff, Under-Sheriff, Mayor, Bailiff or other Head-officer of the relevant City or Town-corporate (the civil authority), to disperse to their homes or go about their lawful business. Further, the assembly had to be given one hour following the warning to disperse. If, and only if, the hour having passed, the unlawful, riotous and tumultuous assembly of more than 12 persons remained, then, as indicated above, those assembled had committed a felony without benefit of clergy, punishable by death.[8]

The sense of fairness and justice inherent in warning the riotous assembly to desist from the perilous course it had embarked upon is something that is part of our social conscience today. And this explains the entry into our idiom of the expression, 'to read the Riot Act'. In fact, writing in 1883, Sir James Fitzjames Stephen refers to the warning and notes, 'the making of this proclamation is commonly, but very incorrectly, called reading the Riot Act'.[9]

The prescribed form of the warning or proclamation that had to be delivered to the assembly was as follows:

> Our Sovereign Lord the King chargeth and commandeth all Persons, being assembled, immediately to disperse themselves and peaceably to depart to their Habitations, or to their lawful Business upon the Pains contained in the Act made in the first Year of King George, for preventing Tumults and Riotous Assemblies.
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> *God save the King.*[10]

The Act's 'gentleness' is confirmed by the requirement that in delivering the proclamation, the Justice of the Peace, or other person authorised to do so, was required to ride among the rioters or get as near to them as he could safely go and

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8 Benefit of Clergy was originally a privilege extended to ordained clerks who had committed a felony. The consequence of claiming benefit of clergy was that the clerk could only be tried and punished by the ecclesiastical courts. The true benefit lay in the fact that the range of penalties that could be imposed by the ecclesiastical courts did not include death and were far less severe than those meted out by the King's courts. In time the benefit of clergy was extended beyond the ordained clergy and developed into 'an intricate set of rules which operated to modify in a very unsatisfactory manner the undue severity of the criminal law'. See W S Holdsworth, above n 3, 293–302, and also Sir J F Stephen, above n 2, Chapter XIII, 459.

9 Sir J F Stephen, above n 2, Ch VII, 203. See also J E S Simon, 'English Idioms from the Law' [1965] 81 *Law Quarterly Review*, 52, 83.

10 1 George I, st 2, C.5.II.

command silence before reading the proclamation 'with loud voice'.[11] That is, the Act provided for the effective delivery of the warning or caution contained in the proclamation to the rioters.

Having said that, however, the Act did not demand that the authorities stand by and wait until one hour had passed if during that time the riotous assembly proceeded to act in contravention of the law. Whilst it was generally thought that the civil authority could not act for one hour after the proclamation was read, this was not the case. Lord Loughborough pointed this out in the course of directing a Grand Jury on the law whilst sitting in the Special Commission for the trial of rioters arising out of the Gordon Riots of 1780.[12] His Lordship said

> I take this public opportunity of mentioning a fatal mistake, into which many persons have fallen. It has been imagined, that because the law allows an hour for the dispersion of a mob to whom the Riot Act has been read by the magistrate, the better to support the civil authority, that, during that time, the civil power and the magistracy are disarmed, and the King's subjects, whose duty it is at all times to suppress riots, are to remain quiet and passive. No such meaning was within view of the legislature, nor does the operation of the Act warrant any such effect. The civil magistrates are left in possession of those powers which the law had given them before. If the mob, collectively, or a part of it, or any individual, within or before the expiration of that hour, attempts or begins to perpetrate an outrage amounting to felony, to pull down houses, or by any other act to violate the law, it is the duty of all present, of whatever description they may be, to endeavour to stop the mischief, and to apprehend the offender.[13]

Of course this doesn't detract from the Act's 'gentleness'. The proclamation, delivered within earshot of the tumultuous assembly, is intended to cause those persons making up that assembly to stop and consider the course that their threatened actions plot for them and the consequences of continuing. This same idea underlies the use of the expression in contemporary society. When the Riot

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11 Ibid.

12 As to the Gordon Riots, see C Hibbert, *King Mob: The Story of Lord George Gordon and the Riots of 1780* (1958) and C Heydon, *Anti-Catholicism in Eighteenth Century England: A Political and Social Study* (1993) Chapter 6. The Gordon Riots began on Friday 2 June 1780 in St George's Fields. The mob, numbering 60,000, marched on the Houses of Parliament. They were led by Lord George Gordon. The pretext for their actions was a protest against recent legislation that removed certain disabilities from Roman Catholics. The riots waged for nearly a week, London effectively being restored to order with the intervention of the military by Thursday 8 June 1780. For an interesting treatment of the Gordon Riots, see Charles Dickens' *Barnaby Rudge, A Tale of the Riots of 'Eighty* (1842).

13 1780, 21 State Trials 485 as referred to in a footnote to *R v Pinney* 5 CAR & P 254, 261: 172 ER 962, 966.

Act is read the intention is that the menacing party be given the opportunity to mend their ways of their own accord and without intervention.

The *pains* referred to in the proclamation, as touched upon above, consisted of the liability to be prosecuted for the commission of a felony without benefit of clergy and, if found guilty, to be sentenced to death.[14] Hardly a deterrent, however, if the authority responsible for enforcing the Act was powerless in the face of a riotous assembly. So where lies the terror referred to by Lord Chief Justice Mansfield? Before answering this rhetorical question, it is instructive to briefly consider the powers available to the officials responsible for law enforcement in eighteenth-century Britain.

Since the *Assize of Arms* of 1181 the local authorities had been empowered where required to raise by hue and cry the *posse comitatus*. That is, the authorities could enlist the services of any and all persons in the neighbourhood in the suppression of crime and the apprehension of criminals.[15] The *Statute of Winchester* of 1285 required every man to keep arms in his home to be used in the event that the hue and cry was raised. Stephen notes that in early times the Sheriff and the constables were the authorities that would raise the hue and cry but that since the beginning of the reign of Edward III, it had become customary for the justices of the peace to do so.[16]

If the *posse comitatus* was available for the suppression of riots, why then, one might ask, was it believed necessary to introduce the Riot Act? It would be wrong to think that the Riot Act was a totally new initiative in crowd control. There were predecessors to similar effect.[17] What appears to have been different, however, is the abandonment over time of the use of the *posse comitatus* in favour of calling upon the military. As a means of crime prevention and control the *posse comitatus* had, by the eighteenth century, fallen into disuse and been replaced by a system of arrest on the authority of a warrant issued by a Justice.[18] This latter system for the apprehension of criminals was obviously powerless to stop a rampaging mob. In his

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14 A prosecution was to take place within 12 months of the date of the commission of the offence and in the county or place where the rioter was apprehended: See 1 George I, st 2, C.5.VIII.

15 *The Case of Arms*, Popham 121, 122: 79 ER 1227. See also Hawkins, *Pleas of the Crown*, Lib 1, c.65, s 11; Hale, *Pleas of the Crown*, 2 Hale, 72–105; *R v The Inhabitants of Wigan* 1 96 ER 25 Black W 47; *Phillips v Eyre* (1870) LR 6 QB 1, 15.

16 Sir J F Stephen, above n 2, Chapter VII, 188–9.

17 Above n 4: See also J A Sharpe, *Crime in Seventeenth Century England* (1983) Chapter 6. In Shakespeare's Henry VI, Part I, set during the reign of Henry VI in the 16th Century, there is an example of the Mayor of London issuing a proclamation to the Duke of Gloucester, the Bishop of Winchester and their men in terms similar to those of the *Riot Act*. See Act I, Sc 4, ln 72.

18 Sir J F Stephen, above n 2, Ch VII, 189.

article, *Changing Attitudes Towards Crime*, Radzinowicz notes that despite the law being unambiguous as to the power of every citizen to take action to suppress a riot,

> ... [a] careful perusal of hundreds of Public Record Office documents confirms that the constant resort to the assistance of the soldiery in preserving the peace hardens into a fast precedent.[19]

In his *History of English Criminal Law*, Radzinowicz expands upon this.

> As society became more complex, as causes of discontent multiplied, as political consciousness developed, it was inevitable, in the absence of adequate civil power, that this should happen. Already in 1740, Pulteney, an inveterate opponent of a strong standing army, was protesting against a trend he could not halt:
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> > 'I doubt not, Sir, but I shall hear on this occasion of the service of our troops in the suppression of riots; we shall be told ... that they have often dispersed the smugglers, that the colliers have been driven down by the terror of their appearance to their subterraneous fortifications, that the weavers, in the midst of that rage which hunger and oppression exacted, fled at their approach.'[20]

An additional fact that may have contributed to the ineffectiveness of the *posse comitatus* was the view that it was preferable that the individual assist the justices rather than act independently in the exercise of his or her common law powers. In the *Case of Arms*, the Judges of England acknowledged that in the face of a riotous mob the *posse comitatus* could be raised by hue and cry and that every individual as part of the *posse comitatus* was empowered to take up arms in order to keep the peace. However, Their Lordships cautioned that they

> ... take it to be the more discreet way for everyone in such case to attend and be assistant to the Justices, Sheriffs or other Ministers of the King in the doing of it.[21]

This sentiment was echoed by Lord Chief Justice Tindal in 1832 as part of his charge to a Grand Jury in Bristol. His Lordship referred to the individual's powers and responsibilities at Common Law in the suppression of riots and the preservation of the Queen's peace before referring to the *Case of Arms* and the quotation from that case set out above, and then said

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19 [1959] 75 *Law Quarterly Review* 381, 384

20 L Radzinowicz, *A History of English Criminal Law, Vol 4: Grappling for Control* (1968) 118.

21 Above n 15.

> It would undoubtedly be more advisable so to do; for the presence and authority of the magistrate would restrain the proceeding to such extremities until the danger was sufficiently immediate, or until some felony was either committed or could not be prevented without recourse to arms; and at all events, the assistance given by men who act in subordination and concert with the magistrate will be more effectual to attain the object proposed than any efforts, however well-intended, of separated and disunited individuals.[22]

But perhaps there is no better illustration of the shortcomings of the *posse comitatus* and, indeed, the *Riot Act*, than the facts of *R v Pinney*.[23] In that case an Information was laid before the Grand Jury by the Attorney-General charging Charles Pinney, the Mayor of Bristol and a Justice of the Peace, with three counts alleging, generally speaking, that he had disregarded and neglected his duty to suppress riots that resulted in, amongst other things, the breaking open of a gaol, the destruction of the Lord Archbishop of Bristol's home, and the burning and demolition of 'one hundred messuages and one hundred dwelling houses'.[24] In delivering the summing up to the Grand Jury, Littledale J noted that the evidence established that the *Riot Act* had been read twice to the mob, firstly by the Recorder of the City of Bristol, Sir Charles Wetherell, and second by the Mayor. The evidence also established that there was no plan proposed by the Mayor or the magistrates as to how to tackle the mob; that it being a Sunday, notices were sent to Churchwardens summonsing the *posse comitatus* but many persons would not attend;[25] that no magistrates were present to receive those who came to assist them; that of those who did turn out some would not assist unless provided with a firearm; others would not assist unless the military were also involved; of the special constables who attended, and there were 300 appointed to address the riot, many went away and did not do what they had undertaken; further it appeared that the local people were not disposed to assist the Recorder and the Mayor; that a troop of horse arrived but left when told that the accommodation provided for them was not available;[26] that when other detachments of troops arrived there was no-one to

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22 *R v Pinney* 5 CAR & P 254, 261; 172 ER 962, 966: This uncertainty as to how the individual should act when a riot threatens to break out appears to have contributed to uncertainty among the general public, a fact observed by Heath J, in *Hancock v Baker* 2 B & P 234, 264: 126 ER 1270, 1272. His Lordship said:

> In the riots which took place in the year 1780, this matter was much misunderstood, and a general persuasion prevailed, that no indifferent person could interpose without the authority of a magistrate: in consequence of which much mischief was done, which might otherwise have been prevented.

23 *R v Pinney* 5 CAR & P 254, 254–9: 172 ER 962, 963–4.

24 Ibid 253; 963.

25 Not more than 150 persons attended in circumstances where Littledale J thought that at least 20,000 of the population of 100,000 should have turned out; ibid 275–6; 973.

26 Littledale J noted that, in all probability, they were told this by a person who did not want the troop to act against the rioters; ibid 278; 974.

receive them, and that the magistrates refused to ride out with the military for fear that the mob would turn against their commercial interests or on account of the fact that they could not ride.

Once the hour had passed after the delivery of the proclamation, the *Riot Act* empowered the civil authority to command all His Majesty's subjects of age and ability to assist them to seize and apprehend the rioters. As indicated, the invariable practice became that the civil authority would call upon the military to assist in dispersing the mob. It is understandable that this practice should develop. What was required to suppress an angry mob was not a hastily summonsed band of untrained, unarmed and undisciplined men who in all likelihood would be friends or at least acquaintances of the rioters by virtue of their coming from the same district. Rather, trained and disciplined soldiers generally from other parts of the country who had no friends among the rioters and no real interest in the issues that gave rise to the riot were a far more efficient weapon. Further, their indifference to the issue and to the rioters was also viewed as beneficial in that law enforcement would be viewed in such light.

Undoubtedly the shortcomings of the *posse comitatus* contributed to the development of the practice whereby the authorities responsible for policing mobs abandoned the use of the *posse comitatus* in favour of calling upon the military.[27] It stands to reason, therefore, that when Lord Chief Justice Mansfield referred to the Act as being 'a step *in terrorem* and of gentleness', that the *in terrorem* consisted of the implicit threat of the use of the military in the event that the unlawful, riotous and tumultuous assembly did not disperse. Furthermore, the *Riot Act* indemnified the authorities, and anyone assisting them, against the King and all other persons for any 'killing, maiming, or hurting of any such persons or persons so unlawfully, riotously and tumultuously assembled, that shall happen to be so killed, maimed or hurt' where those persons have resisted apprehension or efforts made to disperse them.[28] The prospect of the mob being fired upon by the military or subjected to

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27 The *Riot Act* did not specifically empower the civil authority to call out the military. The power was derived from the fact that members of the military remain, despite the commission they may hold, His Majesty's subjects. See *Burdett v Abbott* (1812) 4 Taunt 401; 128 ER 384; *R v The Inhabitants of Wigan* (above n 15). It became the practice for the civil authority to petition the Secretary for War for the assistance of the military. The Secretary would then issue a warrant to the relevant soldiers commanding them to attend upon the justices or magistrates to assist in dealing with a mob. Whilst this became the practice, after the Gordon Riots in the course of debate touching upon the role of the military and the justices in the suppression of riots, the requirement of the issue of the warrant was considered unnecessary. See L Radzinowicz, above n 20, and A Babington, *Military Intervention in Britain: From the Gordon Riots to the Gibraltar Killings* (1990).

28 1 George I, st 2, C.5.III. The value of this indemnification is questionable. It appears that force used in the suppression of a riot had to be proportionate to the threat posed

advancing soldiers with fixed bayonets was, therefore, a very real prospect. Herein the notion of the Act being one *in terrorem* is particularly poignant. And of course, Lord Mansfield would have been well aware of this by virtue of the fact that at the time he described the *Riot Act* as being a step *in terrorem* and of gentleness he did so having lived through the recent Gordon Riots and suffered the demolition of his own home at the hands of the mob. For the purposes of this article, however, the important point is that one way or another the reading of the *Riot Act* signaled a very real warning to those to whom it was read that if they did not disperse, all necessary measures would be employed to restore peace. In this regard, the use of the expression, 'to read the Riot Act', in contemporary society conveys a similar meaning. When we 'read the Riot Act', we too take a step *in terrorem* and in gentleness — change your ways or we will change them for you.

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by the rioters. In the course of his summing in *R v Pinney* (see above n 13, 270; 971) Littledale J made this point to the jury:

> Now a person , whether a magistrate, or peace officer, who has the duty of suppressing a riot, is placed in a very difficult situation, for if, by his acts, he causes death, he is liable to be indicted for murder or manslaughter, and if he does not act, he is liable to an indictment on a information for neglect: he is, therefore, bound to hit the precise line of his duty: and how difficult it is to hit that precise line, will be matter for your consideration, but that, difficult as it may be, he is bound to do.

See also the mention in the footnotes to *R v Pinney* of the case of James Cossley Lewis who shot and killed a young boy who was not involved in a riot in the course of assisting the authorities to suppress a riot. See also L Radzinowicz, above n 20, 125–31.